

1 **INVESTMENT OF HIGHER EDUCATION**
2 **INSTITUTION ENDOWMENT FUNDS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: David Clark**

7 **LONG TITLE**

8 **General Description:**

9 This bill makes higher education institution endowment funds subject to investment
10 restrictions contained in the Uniform Management of Institutions Act and removes
11 higher education institution endowment funds from investment restrictions contained in
12 the State Money Management Act.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ exempts higher education institution endowment funds from the State Money
16 Management Act; and
- 17 ▶ amends the Uniform Management of Institutions Act to provide that:
- 18 • members of a higher education institution's board of trustees are liable for
19 investment losses only if they are grossly negligent or engage in willful
20 misconduct;
 - 21 • a higher education institution may transfer investment responsibilities for an
22 endowment fund to a manager;
 - 23 • the Board of Regents must establish default guideline and asset allocation
24 requirements for investment of endowment funds;
 - 25 • the board of trustees of a higher education institution may adopt policies
26 governing investment of its endowment funds and provides the minimum
27 requirements for those policies;



- 28 • the Board of Regents must approve a higher education institutions endowment
- 29 fund investment policy;
- 30 • each higher education institution must report endowment fund investment
- 31 information monthly to the Board of Regents;
- 32 • the state auditor may audit the investment program of any higher education
- 33 institution; and
- 34 • the Board of Regents must file annual reports to the governor and Legislature
- 35 summarizing endowment investments by higher education institutions.

36 **Monies Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 None

40 **Utah Code Sections Affected:**

41 AMENDS:

- 42 **13-29-2**, as enacted by Chapter 242, Laws of Utah 1997
- 43 **13-29-5**, as enacted by Chapter 242, Laws of Utah 1997
- 44 **13-29-7**, as enacted by Chapter 242, Laws of Utah 1997
- 45 **51-7-2**, as last amended by Chapter 159, Laws of Utah 2002
- 46 **51-7-3**, as last amended by Chapter 248, Laws of Utah 2004
- 47 **51-7-4**, as last amended by Chapters 159 and 250, Laws of Utah 2002
- 48 **51-7-11**, as last amended by Chapter 248, Laws of Utah 2004
- 49 **51-7-13**, as last amended by Chapter 225, Laws of Utah 1999

50 ENACTS:

- 51 **13-29-9**, Utah Code Annotated 1953
- 52 **13-29-10**, Utah Code Annotated 1953

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

55 Section 1. Section **13-29-2** is amended to read:

56 **13-29-2. Definitions.**

57 As used in this chapter:

- 58 (1) (a) "Endowment [~~fund~~] funds" means an institutional fund, or any part of it, not

59 wholly expendable by the institution on a current basis under the terms of the applicable gift
60 instrument.

61 (b) "Endowment funds" includes gifts, devises, or bequests of property of any kind
62 donated to a higher education institution from any source.

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

65 (i) state appropriations;

66 (ii) federal contracts;

67 (iii) federal grants; or

68 (iv) tuition and fees collected from students.

69 (2) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum,
70 writing, or other governing document, including the terms of any institutional solicitations
71 from which an institutional fund resulted, under which property is transferred to or held by an
72 institution as an institutional fund.

73 (3) (a) "Governing board" means the body responsible for the management of an
74 institution or of an institutional fund.

75 (b) "Governing board" means, for a higher education institution, the board of trustees
76 of the higher education institution.

77 (4) "Higher education institution" means the institutions specified in Section
78 53B-1-102.

79 [~~(4)~~] (5) (a) "Historic dollar value" means the aggregate fair value in dollars of:

80 (i) an endowment fund at the time it became an endowment fund;

81 (ii) each subsequent donation to the fund at the time it is made; and

82 (iii) each accumulation made pursuant to a direction in the applicable gift instrument at
83 the time the accumulation is added to the fund.

84 (b) The determination of historic dollar value made in good faith by the institution is
85 conclusive.

86 [~~(5)~~] (6) "Institution" means an incorporated or unincorporated organization organized
87 and operated exclusively for educational, religious, charitable, or other eleemosynary purposes,
88 or a governmental organization to the extent that it holds funds exclusively for any of these
89 purposes.

90 ~~[(6)]~~ (7) "Institutional fund" means a fund held by an institution for its exclusive use,
91 benefit, or purposes, but does not include:

- 92 (a) a fund held for an institution by a trustee that is not an institution; or
- 93 (b) a fund in which a beneficiary that is not an institution has an interest other than
- 94 possible rights that could arise upon violation or failure of the purposes of the fund.

95 (8) "Manager" means either:

- 96 (a) the state treasurer; or
- 97 (b) a higher education institution that accepts the responsibility for the management of
- 98 the endowment funds of a different higher education institution.

99 Section 2. Section **13-29-5** is amended to read:

100 **13-29-5. Investment authority.**

101 In addition to an investment otherwise authorized by law or by the applicable gift
102 instrument, and without restriction to investments a fiduciary may make, the governing board,
103 subject to any specific limitations set forth in the applicable gift instrument or in ~~[Title 51,~~
104 ~~Chapter 7, State Money Management Act, for governmental organizations or in the applicable~~
105 ~~law other than law relating to investments by a fiduciary]~~ this chapter, may:

- 106 (1) invest and reinvest an institutional fund in any real or personal property considered
- 107 advisable by the governing board, whether or not it produces a current return, including
- 108 mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations,
- 109 shares in or obligations of associations, partnerships, or individuals, and obligations of any
- 110 state government or political subdivision;
- 111 (2) retain property contributed by a donor to an institutional fund for as long as the
- 112 governing board considers advisable;
- 113 (3) include all or any part of an institutional fund in any pooled or common fund
- 114 maintained by the institution; and
- 115 (4) invest all or any part of an institutional fund in any other pooled or common fund
- 116 available for investment, including shares or interests in regulated investment companies,
- 117 mutual funds, common trust funds, investment partnerships, real estate investment trusts, or
- 118 similar organizations in which funds are commingled and investment determinations are made
- 119 by persons other than the governing board.

120 Section 3. Section **13-29-7** is amended to read:

121 **13-29-7. Standard of conduct.**

122 (1) In the administration of the powers to appropriate appreciation, to make and retain
123 investments, and to delegate investment management of institutional funds, members of the
124 governing board shall exercise ordinary business care and prudence under the facts and
125 circumstances prevailing at the time of the action or decision.

126 (2) In ~~[doing so]~~ exercising those powers, they shall consider:

127 (a) the long and short-term needs of the institution in carrying out its educational,
128 religious, charitable, or other eleemosynary purposes[;];

129 (b) its present and anticipated financial requirements[;];

130 (c) the expected total return on its investments[;];

131 (d) price level trends[;]; and

132 (e) general economic conditions.

133 (3) Except in cases of willful misconduct or gross negligence, members of the
134 governing board are not liable for any loss that results from the execution of their
135 responsibilities under this chapter.

136 Section 4. Section 13-29-9 is enacted to read:

137 **13-29-9. Transfer of endowment funds.**

138 (1) A higher education institution may only transfer the management of any
139 endowment fund to a manager if the transferring higher education institution:

140 (a) retains sufficient funds to cover its cash requirements; and

141 (b) continues to be responsible for the proper collection, deposit, and disbursement of
142 the endowment fund in the manner provided by law.

143 (2) The endowment funds transferred as provided in this section are subject to all
144 applicable provisions of this chapter and are under the jurisdiction of the manager until the
145 transferring higher education institution withdraws these endowment funds from the manager.

146 (3) A higher education institution may withdraw all or any part of the endowment
147 funds transferred to the manager, subject to any rules established by the manager governing
148 notice or limits on the amount of endowment funds that may be withdrawn.

149 Section 5. Section 13-29-10 is enacted to read:

150 **13-29-10. Requirements of member institutions of the state system of higher**
151 **education.**

152 (1) The State Board of Regents shall:

153 (a) establish asset allocations for the endowment funds;

154 (b) in consultation with the commissioner of higher education, establish guidelines for
 155 investing the funds; and

156 (c) establish a ~~H~~→ **written** ←~~H~~ policy governing conflicts of interest.

157 (2) (a) A higher education institution may not invest its endowment funds in violation
 158 of the State Board of Regents' guidelines unless the State Board of Regents approves an
 159 investment policy that has been adopted by the higher education institution's board of trustees.

160 (b) A higher education institution and its employees shall comply with the State Board
 161 of Regents' conflict of interest requirements unless the State Board of Regents approves the
 162 conflict of interest policy that has been adopted by the higher education institution's board of
 163 trustees.

164 (3) (a) The board of trustees of a higher education institution may adopt:

165 (i) an investment policy to govern the investment of the higher education institution's
 166 endowment funds; and

167 (ii) a conflict of interest policy.

168 (b) The investment policy shall:

169 (i) define the groups, and the responsibilities of those groups, that must be involved
 170 with investing the endowment funds;

171 (ii) ensure that the groups defined under Subsection (3)(b)(i) at least include the board
 172 of trustees, an investment committee, institutional staff, and a custodian bank;

173 (iii) create an investment committee that includes not more than two members of the
 174 board of trustees and no less than two ~~H~~→ **independent** ←~~H~~ investment management
 174a professionals;

175 (iv) determine an appropriate risk level for the endowment funds;

176 (v) establish allocation ranges for asset classes considered suitable for the endowment
 177 funds;

178 (vi) determine prudent diversification of the endowment funds; and

179 (vii) establish performance objectives and a regular review process.

180 (c) Each higher education institution that adopts an investment policy, a conflict of
 181 interest policy, or both shall submit the policy, and any subsequent amendments, to the State
 182 Board of Regents for its approval.

183 (4) Each higher education institution shall make monthly reports detailing the deposit
 184 and investment of funds in its custody or control to:

185 (a) its board of trustees; and

186 (b) the State Board of Regents.

187 (5) The state auditor may conduct or cause to be conducted an annual audit of the
 188 investment program of each higher education institution.

189 (6) The State Board of Regents shall submit an annual report to the governor and the
 190 Legislature summarizing all investments by higher education institutions under its jurisdiction.

191 Section 6. Section **51-7-2** is amended to read:

192 **51-7-2. Exemptions from chapter.**

193 The following funds are exempt from this chapter:

194 (1) funds invested in accordance with the participating employees' designation or
 195 direction pursuant to a public employees' deferred compensation plan established and operated
 196 in compliance with Section 457 of the Internal Revenue Code of 1954, as amended;

197 (2) funds of the Workers' Compensation Fund;

198 (3) funds of the Utah State Retirement Board;

199 (4) funds of the Utah Technology Finance Corporation; [~~and~~]

200 (5) funds of the Utah Housing Corporation[-]; and

201 (6) endowment funds of higher education institutions.

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

203 **51-7-3. Definitions.**

204 As used in this chapter:

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

206 (2) "Certified dealer" means:

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

209 (b) a broker dealer who:

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

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

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

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

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

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

218 (5) "Council" means the State Money Management Council created by Section
 219 51-7-16.

220 (6) "Director" means the director of the Utah State Division of Securities of the
 221 Department of Commerce.

222 (7) (a) "Endowment funds" means gifts, devises, or bequests of property of any kind
 223 donated to a higher education institution from any source.

224 (b) "Endowment funds" does not mean monies used for the general operation of a
 225 higher education institution that are received by the higher education institution from:

226 (i) state appropriations;

227 (ii) federal contracts;

228 (iii) federal grants; ~~H~~→ [or] ←~~H~~

229 (iv) ~~H~~→ private research grants; and

229a (v) ←~~H~~ tuition and fees collected from students.

230 ~~(7)~~ (8) "First tier commercial paper" means commercial paper rated by at least two
 231 nationally recognized statistical rating organizations in the highest short-term rating category.

232 ~~(8)~~ (9) "Funds functioning as endowments" means funds, regardless of source, whose
 233 corpus is intended to be held in perpetuity by formal institutional designation according to the
 234 institution's policy for designating those funds.

235 ~~(9)~~ (10) "Hard put" means an unconditional sell-back provision or a redemption
 236 provision applicable at issue to a note or bond, allowing holders to sell their holdings back to
 237 the issuer or to an equal or higher-rated third party provider at specific intervals and specific
 238 prices determined at the time of issuance.

239 (11) "Higher education institution" means the institutions specified in Section
 240 53B-1-102.

241 ~~(10)~~ (12) "Investment adviser representative" means "investment adviser
 242 representative" as defined in Section 61-1-13.

243 ~~(11)~~ (13) (a) "Investment agreement" means any written agreement that has
 244 specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated

245 interest rate.

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

248 [~~(12)~~] (14) "Market value" means market value as defined in the Master Repurchase
249 Agreement.

250 [~~(13)~~] (15) "Master Repurchase Agreement" means the current standard Master
251 Repurchase Agreement approved by the Public Securities Association or by any successor
252 organization.

253 [~~(14)~~] (16) "Maximum amount" means, with respect to qualified depositories, the total
254 amount of:

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

256 (b) nonqualifying repurchase agreements.

257 [~~(15)~~] (17) "Money market mutual fund" means an open-end managed investment
258 fund:

259 (a) that complies with the diversification, quality, and maturity requirements of Rule
260 2a-7 or any successor rule of the Securities and Exchange Commission applicable to money
261 market mutual funds; and

262 (b) that assesses no sales load on the purchase of shares and no contingent deferred
263 sales charge or other similar charges, however designated.

264 [~~(16)~~] (18) "Nationally recognized statistical rating organization" means an
265 organization that has been designated as a nationally recognized statistical rating organization
266 by the Securities and Exchange Commission's Division of Market Regulation.

267 [~~(17)~~] (19) "Nonqualifying repurchase agreement" means a repurchase agreement
268 evidencing indebtedness of a qualified depository arising from the transfer of obligations of the
269 United States Treasury or other authorized investments to public treasurers that is:

270 (a) evidenced by a safekeeping receipt issued by the qualified depository;

271 (b) included in the depository's maximum amount of public funds; and

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

274 [~~(18)~~] (20) "Operating funds" means current balances and other funds that are to be
275 disbursed for operation of the state government or any of its boards, commissions, institutions,

276 departments, divisions, agencies, or other similar instrumentalities, or any county, city, school
 277 district, political subdivision, or other public body.

278 ~~[(19)]~~ (21) "Permanent funds" means funds whose principal may not be expended, the
 279 earnings from which are to be used for purposes designated by law.

280 ~~[(20)]~~ (22) "Permitted depository" means any out-of-state financial institution that
 281 meets quality criteria established by rule of the council.

282 ~~[(21)]~~ (23) ~~Ĥ→~~ ~~[(a)]~~ ~~←Ĥ~~ "Public funds" means monies, funds, and accounts,
 282a regardless of the
 283 source from which the monies, funds, and accounts are derived, that are owned, held, or
 284 administered by the state or any of its boards, commissions, institutions, departments,
 285 divisions, agencies, bureaus, laboratories, or other similar instrumentalities, or any county, city,
 286 school district, political subdivision, or other public body.

287 ~~Ĥ→~~ ~~[(b)]~~ ~~"Public funds" does not mean endowment funds.~~ ~~←Ĥ~~

288 ~~[(22)]~~ (24) (a) "Public monies" means "public funds."

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

291 ~~[(23)]~~ (25) "Public treasurer" includes the state treasurer and the official of any state
 292 board, commission, institution, department, division, agency, or other similar instrumentality,
 293 or of any county, city, school district, political subdivision, or other public body who has the
 294 responsibility for the safekeeping and investment of any public funds.

295 ~~[(24)]~~ (26) "Qualified depository" means a Utah depository institution or an
 296 out-of-state depository institution, as those terms are defined in Section 7-1-103 that is
 297 authorized to conduct business in this state under Section 7-1-702 or Title 7, Chapter 19,
 298 Acquisition of Failing Depository Institutions or Holding Companies, whose deposits are
 299 insured by an agency of the federal government and that has been certified by the commissioner
 300 of financial institutions as having met the requirements established under this chapter and the
 301 rules of the council to be eligible to receive deposits of public funds.

302 ~~[(25)]~~ (27) "Qualifying repurchase agreement" means a repurchase agreement
 303 evidencing indebtedness of a financial institution or government securities dealer acting as
 304 principal arising from the transfer of obligations of the United States Treasury or other
 305 authorized investments to public treasurers only if purchased securities are:

306 (a) delivered to the public treasurer's safekeeping agent or custodian as contemplated

307 by Section 7 of the Master Repurchase Agreement; and

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

310 [~~(26)~~] (28) "Securities division" means Utah's Division of Securities created within the
311 Department of Commerce by Section 13-1-2.

312 [~~(27)~~] (29) ~~H~~→ [a] ←~~H~~ "State funds" means:

313 ~~H~~→ [f] (a) [f] [~~(i)~~] ←~~H~~ public monies raised by operation of law for the support and
313a operation of the

314 state government; and

315 ~~H~~→ [f] (b) [f] [~~(ii)~~] ←~~H~~ all other monies, funds, and accounts, regardless of the source
315a from which the

316 monies, funds, or accounts are derived, that are owned, held, or administered by the state or any
317 of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories,
318 or other similar instrumentalities.

319 ~~H~~→ [~~(b)~~] "State funds" does not mean endowment funds. ←~~H~~

320 Section 8. Section 51-7-4 is amended to read:

321 **51-7-4. Transfer of functions, powers, and duties relating to public funds to state**
322 **treasurer -- Exceptions -- Deposit of income from investment of state money.**

323 (1) Unless otherwise required by the Utah Constitution or applicable federal law, the
324 functions, powers, and duties vested by law in each and every state officer, board, commission,
325 institution, department, division, agency, and other similar instrumentalities relating to the
326 deposit, investment, or reinvestment of public funds, and the purchase, sale, or exchange of any
327 investments or securities of or for any funds or accounts under the control and management of
328 these instrumentalities, are transferred to and shall be exercised by the state treasurer, except:

329 (a) funds assigned to the Utah State Retirement Board for investment under Section
330 49-11-302;

331 (b) funds of member institutions of the state system of higher education:

332 (i) acquired by gift, devise, or bequest, or by federal or private contract or grant;

333 (ii) derived from student fees or from income from operations of auxiliary enterprises,
334 which fees and income are pledged or otherwise dedicated to the payment of interest and

335 principal of bonds issued by such institutions; and

336 (iii) any other funds which are not included in the institution's work program as

337 approved by the State Board of Regents;

- 338 (c) funds of the Utah Technology Finance Corporation;
- 339 (d) inmate funds as provided in Section 64-13-23 or in Title 64, Chapter 9b, Work
- 340 Programs for Prisoners;
- 341 (e) trust funds established by judicial order;
- 342 (f) funds of the Workers' Compensation Fund; ~~and~~
- 343 (g) funds of the Utah Housing Corporation[-]; and
- 344 (h) endowment funds of higher education institutions.

345 (2) All public funds held or administered by the state or any of its boards,
 346 commissions, institutions, departments, divisions, agencies, or similar instrumentalities and not
 347 transferred to the state treasurer as provided by this section shall be:

348 (a) deposited and invested by the custodian in accordance with this chapter, unless
 349 otherwise required by statute or by applicable federal law; and

350 (b) reported to the state treasurer in a form prescribed by the state treasurer.

351 (3) Unless otherwise provided by the constitution or laws of this state or by contractual
 352 obligation, the income derived from the investment of state money by the state treasurer shall
 353 be deposited in and become part of the General Fund.

354 Section 9. Section **51-7-11** is amended to read:

355 **51-7-11. Authorized deposits or investments of public funds.**

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

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

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

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

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

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

368 (i) Government National Mortgage Association mortgage pools;

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

- 400 (vi) Federal Agriculture Mortgage Corporation; and
- 401 (vii) Tennessee Valley Authority;
- 402 (i) fixed rate corporate obligations that:
- 403 (i) are rated "A" or higher or the equivalent of "A" or higher by two nationally
- 404 recognized statistical rating organizations, one of which must be by Moody's Investors Service
- 405 or Standard and Poor's;
- 406 (ii) are publicly traded; and
- 407 (iii) have a remaining term to final maturity of 365 days or less or is subject to a hard
- 408 put at par value or better, within 365 days;
- 409 (j) tax anticipation notes and general obligation bonds of the state or of any county,
- 410 incorporated city or town, school district, or other political subdivision of this state, including
- 411 bonds offered on a when-issued basis without regard to the limitation in Subsection (7);
- 412 (k) bonds, notes, or other evidence of indebtedness of any county, incorporated city or
- 413 town, school district, or other political subdivision of the state that are payable from
- 414 assessments or from revenues or earnings specifically pledged for payment of the principal and
- 415 interest on these obligations, including bonds offered on a when-issued basis without regard to
- 416 the limitation in Subsection (7);
- 417 (l) shares or certificates in a money market mutual fund as defined in Section 51-7-3;
- 418 (m) variable rate negotiable deposits that:
- 419 (i) are issued by a qualified depository or a permitted depository;
- 420 (ii) are repriced at least semiannually; and
- 421 (iii) have a remaining term to final maturity not to exceed two years;
- 422 (n) variable rate securities that:
- 423 (i) (A) are rated "A" or higher or the equivalent of "A" or higher by two nationally
- 424 recognized statistical rating organizations, one of which must be by Moody's Investors Service
- 425 or Standard and Poor's;
- 426 (B) are publicly traded;
- 427 (C) are repriced at least semiannually; and
- 428 (D) have a remaining term to final maturity not to exceed two years or are subject to a
- 429 hard put at par value or better, within 365 days;
- 430 (ii) are not mortgages, mortgage-backed securities, mortgage derivative products, or

431 any security making unscheduled periodic principal payments other than optional redemptions.

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

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

435 ~~[(b) funds of member institutions of the state system of higher education and funds of
436 public education foundations acquired by:]~~

437 ~~[(i) gift, devise, or bequest; or]~~

438 ~~[(ii) federal or private grant;]~~

439 ~~[(c) the corpus of funds functioning as endowments of member institutions of the state
440 system of higher education and the corpus of funds functioning as endowments of public
441 education foundations;]~~

442 ~~[(d)]~~ (b) the Employers' Reinsurance Fund created in Section 34A-2-702; and

443 ~~[(e)]~~ (c) the Uninsured Employers' Fund created in Section 34A-2-704.

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

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

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

452 Section 10. Section **51-7-13** is amended to read:

453 **51-7-13. Funds of member institutions of state system of higher education and
454 public education foundations -- Authorized deposits or investments.**

455 (1) The provisions of this section apply to all funds of ~~[member institutions of the state
456 system of];~~

457 (a) higher education institutions, other than endowment funds, that are not transferred
458 to the state treasurer under Section 51-7-4 ~~[and all funds of];~~ and

459 (b) public education foundations established under Section 53A-4-205.

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

462 [~~(A)~~ all funds acquired by gift, devise, or bequest or by federal or private grant; and]

463 [~~(B)~~ the corpus of funds functioning as endowments.]

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

466 [~~(b)~~] (2) (a) Proceeds of general obligation bond issues and all funds pledged or
467 otherwise dedicated to the payment of interest and principal of general obligation bonds issued
468 by or for the benefit of the institution shall be invested according to the requirements of:

469 (i) Section 51-7-11 and the rules of the council; or

470 (ii) the terms of the borrowing instruments applicable to those bonds and funds if those
471 terms are more restrictive than Section 51-7-11.

472 [~~(e)~~] (b) (i) The public treasurer shall invest the proceeds of bonds other than general
473 obligation bonds issued by or for the benefit of the institution and all funds pledged or
474 otherwise dedicated to the payment of interest and principal of bonds other than general
475 obligation bonds according to the terms of the borrowing instruments applicable to those
476 bonds.

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

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

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

486 (b) The state auditor may conduct or cause to be conducted an annual audit of the
487 investment program of each institution.

488 (c) The State Board of Regents shall:

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

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

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

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

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

Legislative Review Note
as of 2-1-05 8:12 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0255

Investment of Higher Education Institution Endowment Funds

08-Feb-05

11:50 AM

State Impact

If higher education selects endowment managers that are not certified, there may be a small reduction in future revenues in the Commerce Service Fund.

Individual and Business Impact

If higher education selects endowment managers that are not certified, the managers will avoid license fees of \$500 per year.

Office of the Legislative Fiscal Analyst