

**INVESTMENT OF HIGHER EDUCATION  
INSTITUTION ENDOWMENT FUNDS**

2005 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David Clark**

Senate Sponsor: Dan R. Eastman

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

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

fund investment policy;

- each higher education institution must report endowment fund investment information monthly to the Board of Regents;
- the state auditor may audit the investment program of any higher education institution; and
- the Board of Regents must file annual reports to the governor and Legislature summarizing endowment investments by higher education institutions.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

ENACTS:

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

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

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

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

As used in this chapter:

(1) (a) "Endowment ~~[fund]~~ funds" means an institutional fund, or any part of it, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

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

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

(i) state appropriations;

(ii) federal contracts;

(iii) federal grants; or

(iv) tuition and fees collected from students.

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

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

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

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

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

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

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

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

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

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

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

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

(8) "Manager" means either:

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

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

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

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

- (1) invest and reinvest an institutional fund in any real or personal property considered advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any state government or political subdivision;
- (2) retain property contributed by a donor to an institutional fund for as long as the governing board considers advisable;
- (3) include all or any part of an institutional fund in any pooled or common fund

maintained by the institution; and

(4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

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

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

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

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

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

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

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

(d) price level trends[;]; and

(e) general economic conditions.

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

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

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

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

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

(b) continues to be responsible for the proper collection, deposit, and disbursement of the

endowment fund in the manner provided by law.

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

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

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

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

(1) The State Board of Regents shall:

(a) establish asset allocations for the endowment funds;

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

(c) establish a written policy governing conflicts of interest.

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

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

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

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

(ii) a conflict of interest policy.

(b) The investment policy shall:

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

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

(iii) create an investment committee that includes not more than two members of the board of trustees and no less than two independent investment management professionals;

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

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

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

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

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

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

(a) its board of trustees; and

(b) the State Board of Regents.

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

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

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

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

The following funds are exempt from this chapter:

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

(2) funds of the Workers' Compensation Fund;

(3) funds of the Utah State Retirement Board;

- (4) funds of the Utah Technology Finance Corporation; [~~and~~]
- (5) funds of the Utah Housing Corporation[~~;~~]; and
- (6) endowment funds of higher education institutions.

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

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

As used in this chapter:

- (1) "Agent" means "agent" as defined in Section 61-1-13.
- (2) "Certified dealer" means:
  - (a) a primary reporting dealer recognized by the Federal Reserve Bank of New York who is certified by the director as having met the applicable criteria of council rule; or
  - (b) a broker dealer who:
    - (i) has and maintains an office and a resident registered principal in the state;
    - (ii) meets the capital requirements established by council rules;
    - (iii) meets the requirements for good standing established by council rule; and
    - (iv) is certified by the director as meeting quality criteria established by council rule.
- (3) "Certified investment adviser" means a federal covered adviser, as defined in Section 61-1-13, or an investment adviser, as defined in Section 61-1-13, who is certified by the director as having met the applicable criteria of council rule.
- (4) "Commissioner" means the commissioner of financial institutions.
- (5) "Council" means the State Money Management Council created by Section 51-7-16.
- (6) "Director" means the director of the Utah State Division of Securities of the Department of Commerce.
- (7) (a) "Endowment funds" means gifts, devises, or bequests of property of any kind donated to a higher education institution from any source.
- (b) "Endowment funds" does not mean monies used for the general operation of a higher education institution that are received by the higher education institution from:
  - (i) state appropriations;
  - (ii) federal contracts;



(iii) federal grants;

(iv) private research grants; and

(v) tuition and fees collected from students.

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

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

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

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

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

~~[(11)]~~ (13) (a) "Investment agreement" means any written agreement that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate.

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

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

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

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

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

(b) nonqualifying repurchase agreements.

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

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

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

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

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

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

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

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

~~[(18)]~~ (20) "Operating funds" means current balances and other funds that are to be disbursed for operation of the state government or any of its boards, commissions, institutions, departments, divisions, agencies, or other similar instrumentalities, or any county, city, school district, political subdivision, or other public body.

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

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

~~[(21)]~~ (23) "Public funds" means monies, funds, and accounts, regardless of the source from which the monies, funds, and accounts are derived, that are owned, held, or administered by the state or any of its boards, commissions, institutions, departments, divisions, agencies,

bureaus, laboratories, or other similar instrumentalities, or any county, city, school district, political subdivision, or other public body.

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

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

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

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

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

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

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

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

~~[(27)]~~ (29) "State funds" means:

(a) public monies raised by operation of law for the support and operation of the state

government; and

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

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

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

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

- (a) funds assigned to the Utah State Retirement Board for investment under Section 49-11-302;
- (b) funds of member institutions of the state system of higher education:
  - (i) acquired by gift, devise, or bequest, or by federal or private contract or grant;
  - (ii) derived from student fees or from income from operations of auxiliary enterprises, which fees and income are pledged or otherwise dedicated to the payment of interest and principal of bonds issued by such institutions; and
  - (iii) any other funds which are not included in the institution's work program as approved by the State Board of Regents;
- (c) funds of the Utah Technology Finance Corporation;
- (d) inmate funds as provided in Section 64-13-23 or in Title 64, Chapter 9b, Work Programs for Prisoners;
- (e) trust funds established by judicial order;
- (f) funds of the Workers' Compensation Fund; [~~and~~]

- (g) funds of the Utah Housing Corporation[-]; and
- (h) endowment funds of higher education institutions.

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

- (a) deposited and invested by the custodian in accordance with this chapter, unless otherwise required by statute or by applicable federal law; and
  - (b) reported to the state treasurer in a form prescribed by the state treasurer.
- (3) Unless otherwise provided by the constitution or laws of this state or by contractual obligation, the income derived from the investment of state money by the state treasurer shall be deposited in and become part of the General Fund.

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

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

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

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

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

~~[(e)]~~ (c) 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 10. 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.**



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

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

(b) 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)]~~ (2) (a) 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)]~~ (b) (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)]~~ (c) 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.]~~