

1                                   **INVESTMENT OF LAND GRANT TRUST**

2   **FUNDS**

3   2006 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: David Clark**

6   Senate Sponsor: Thomas V. Hatch

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7  
8                   **LONG TITLE**

9                   **General Description:**

10                   This bill exempts land grant trust funds from the specific investment limitations of the  
11 Money Management Act and directs the State Treasurer to invest them.

12                   **Highlighted Provisions:**

13                   This bill:

- 14                   ▶ exempts land grant trust funds from investment limitations in the Money  
15 Management Act;
- 16                   ▶ directs the state treasurer to invest trust fund monies using the "prudent investor"  
17 rule and standards established by this bill;
- 18                   ▶ defines the criteria to be used to evaluate whether or not the state treasurer has  
19 complied with the "prudent investor" rule;
- 20                   ▶ establishes an Investment Advisory Committee, defines its membership, operation,  
21 and duties; and
- 22                   ▶ makes technical corrections.

23                   **Monies Appropriated in this Bill:**

24                   None

25                   **Other Special Clauses:**

26                   None

27                   **Utah Code Sections Affected:**



28 AMENDS:

29 **51-7-2**, as last amended by Chapters 71 and 178, Laws of Utah 2005

30 **51-7-11**, as last amended by Chapter 178, Laws of Utah 2005

31 **51-7-14**, as last amended by Chapter 163, Laws of Utah 2003

32 ENACTS:

33 **51-7a-101**, Utah Code Annotated 1953

34 **51-7a-102**, Utah Code Annotated 1953

35 **51-7a-201**, Utah Code Annotated 1953

36 **51-7a-202**, Utah Code Annotated 1953

37 **51-7a-301**, Utah Code Annotated 1953

38 **51-7a-302**, Utah Code Annotated 1953



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

41 Section 1. Section **51-7-2** is amended to read:

42 **51-7-2. Exemptions from chapter.**

43 The following funds are exempt from this chapter:

44 (1) funds invested in accordance with the participating employees' designation or  
45 direction pursuant to a public employees' deferred compensation plan established and operated  
46 in compliance with Section 457 of the Internal Revenue Code of [~~1954~~] 1986, as amended;

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

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

49 (4) funds of the Utah Housing Corporation; [~~and~~]

50 (5) endowment funds of higher education institutions[~~;~~]; and

51 (6) permanent and other land grant trust funds established pursuant to the Utah

52 Enabling Act and the Utah Constitution.

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

54 **51-7-11. Authorized deposits or investments of public funds.**

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

58 (b) A public treasurer may, in furtherance of his duties, designate a certified investment

59 adviser to make trades on behalf of the public treasurer.

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

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

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

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

67 (i) Government National Mortgage Association mortgage pools;

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

69 (iii) Federal National Mortgage Corporation mortgage pools;

70 (iv) Small Business Administration loan pools;

71 (v) Federal Agriculture Mortgage Corporation pools; or

72 (vi) other investments authorized by this section;

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

75 (i) Government National Mortgage Association mortgage pools;

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

77 (iii) Federal National Mortgage Corporation mortgage pools;

78 (iv) Small Business Administration loan pools; or

79 (v) other investments authorized by this section;

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

83 (e) bankers' acceptances that:

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

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

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

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

90 (h) obligations other than mortgage pools and other mortgage derivative products  
91 issued by, or fully guaranteed as to principal and interest by, the following agencies or  
92 instrumentalities of the United States in which a market is made by a primary reporting  
93 government securities dealer:

- 94 (i) Federal Farm Credit banks;
- 95 (ii) Federal Home Loan banks;
- 96 (iii) Federal National Mortgage Association;
- 97 (iv) Student Loan Marketing Association;
- 98 (v) Federal Home Loan Mortgage Corporation;
- 99 (vi) Federal Agriculture Mortgage Corporation; and

100 (vii) Tennessee Valley Authority;

101 (i) fixed rate corporate obligations that:

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

105 (ii) are publicly traded; and

106 (iii) have a remaining term to final maturity of 365 days or less or is subject to a hard  
107 put at par value or better, within 365 days;

108 (j) tax anticipation notes and general obligation bonds of the state or of any county,  
109 incorporated city or town, school district, or other political subdivision of this state, including  
110 bonds offered on a when-issued basis without regard to the limitation in Subsection (7);

111 (k) bonds, notes, or other evidence of indebtedness of any county, incorporated city or  
112 town, school district, or other political subdivision of the state that are payable from  
113 assessments or from revenues or earnings specifically pledged for payment of the principal and  
114 interest on these obligations, including bonds offered on a when-issued basis without regard to  
115 the limitation in Subsection (7);

116 (l) shares or certificates in a money market mutual fund as defined in Section 51-7-3;

117 (m) variable rate negotiable deposits that:

118 (i) are issued by a qualified depository or a permitted depository;

119 (ii) are repriced at least semiannually; and

120 (iii) have a remaining term to final maturity not to exceed two years;

- 121 (n) variable rate securities that:
- 122 (i) (A) are rated "A" or higher or the equivalent of "A" or higher by two nationally  
 123 recognized statistical rating organizations, one of which must be by Moody's Investors Service  
 124 or Standard and Poor's;
- 125 (B) are publicly traded;
- 126 (C) are repriced at least semiannually; and
- 127 (D) have a remaining term to final maturity not to exceed two years or are subject to a  
 128 hard put at par value or better, within 365 days; and
- 129 (ii) are not mortgages, mortgage-backed securities, mortgage derivative products, or  
 130 any security making unscheduled periodic principal payments other than optional redemptions.
- 131 (4) The following public funds are exempt from the requirements of Subsection (3):
- 132 ~~[(a) funds of the permanent land grant trust funds established pursuant to the Utah~~  
 133 ~~Enabling Act and the Utah Constitution;]~~
- 134 ~~[(b)]~~ (a) the Employers' Reinsurance Fund created in Section 34A-2-702; and
- 135 ~~[(c)]~~ (b) the Uninsured Employers' Fund created in Section 34A-2-704.
- 136 (5) If any of the deposits authorized by Subsection (3)(a) are negotiable or  
 137 nonnegotiable large time deposits issued in amounts of \$100,000 or more, the interest shall be  
 138 calculated on the basis of the actual number of days divided by 360 days.
- 139 (6) A public treasurer may maintain fully insured deposits in demand accounts in a  
 140 federally insured nonqualified depository only if a qualified depository is not reasonably  
 141 convenient to the entity's geographic location.
- 142 (7) The public treasurer shall ensure that all purchases and sales of securities are settled  
 143 within 15 days of the trade date.
- 144 Section 3. Section **51-7-14** is amended to read:
- 145 **51-7-14. Prudent man rule for management of investments -- Sale of security or**  
 146 **investment for less than cost.**
- 147 (1) ~~[Selection of]~~ Persons selecting investments ~~[as]~~ authorized by Sections 51-7-11,  
 148 51-7-12, and 51-7-13 shall ~~[be made with the]~~:
- 149 (a) exercise ~~[of]~~ that degree of judgment and care, under the circumstances ~~[then]~~  
 150 prevailing at the time the investment is selected, that persons of prudence, discretion, and  
 151 intelligence exercise in the management of their own affairs~~[-]~~;

- 152 (b) select investments not for speculation but for investment~~[, considering];~~
- 153 (c) consider:
- 154 (i) the probable safety of [their] the capital~~[, as well as];~~
- 155 (ii) the probable benefits to be derived ~~[and];~~
- 156 (iii) the probable duration for which that investment may be made~~[, considering];~~
- 157 (iv) the investment objectives specified in Section 51-7-17[;]; and ~~[considering]~~
- 158 (v) the investment portfolio as a whole.

159 (2) A public treasurer may sell or otherwise dispose of, at less than cost, any security or  
 160 investment in which public funds under his jurisdiction have been invested if ~~[such] that~~ sale or  
 161 other disposition tends to maximize the benefits that may be derived from ~~[such] the~~ changed  
 162 investment.

163 Section 4. Section **51-7a-101** is enacted to read:

164 **CHAPTER 7a. INVESTMENT OF LAND GRANT TRUST FUND MONIES**

165 **Part 1. General Provisions**

166 **51-7a-101. Title.**

167 This chapter is known as the "Investment of Land Grant Trust Fund Monies."

168 Section 5. Section **51-7a-102** is enacted to read:

169 **51-7a-102. Definitions.**

170 As used in this chapter, "land grant trust funds" means the permanent and other land  
 171 grant trust funds established under the Utah Enabling Act and the Utah Constitution.

172 Section 6. Section **51-7a-201** is enacted to read:

173 **Part 2. Investment of Land Grant Trust Fund Monies**

174 **51-7a-201. Investment of land grant trust funds.**

175 (1) The state treasurer shall:

176 (a) invest land grant trust funds with the primary goal of providing for the stability,  
 177 income, and growth of the principal;

178 (b) in making investment decisions, consider:

179 (i) general economic conditions;

180 (ii) the possible effect of inflation or deflation;

181 (iii) the role that each investment or course of action plays within the overall trust  
 182 portfolio;

183 (iv) the expected total return from income and the appreciation of capital;  
184 (v) other resources of the beneficiaries; and  
185 (vi) needs for liquidity, regularity of income, and preservation or appreciation of  
186 capital; and

187 (c) diversify the investments of the trust funds, unless the state treasurer reasonably  
188 determines that the purposes of the trust funds are better served without diversifying.

189 (2) Nothing in this section requires a specific outcome in investing.

190 (3) The state treasurer may deduct any administrative costs incurred in managing trust  
191 fund assets from earnings before distributing them.

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

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

196 Section 7. Section **51-7a-202** is enacted to read:

197 **51-7a-202. State Treasurer to follow "prudent investor" rule -- Standard of care.**

198 (1) The state treasurer shall invest and manage the trust fund assets as a prudent  
199 investor would, by:

200 (a) considering the purposes, terms, distribution requirements, and other circumstances  
201 of the trust funds; and

202 (b) exercising reasonable care, skill, and caution in order to meet the standard of care  
203 of a prudent investor.

204 (2) In determining whether or not the state treasurer has met the standard of care of a  
205 prudent investor, the judge or finder of fact shall:

206 (a) consider the state treasurer's actions in light of the facts and circumstances existing  
207 at the time of the investment decision or action, and not by hindsight; and

208 (b) evaluate the state treasurer's investment and management decisions respecting  
209 individual assets:

210 (i) not in isolation, but in the context of a trust fund portfolio as a whole; and

211 (ii) as a part of an overall investment strategy that has risk and return objectives  
212 reasonably suited to the trust funds.

213 Section 8. Section **51-7a-301** is enacted to read:

214 **Part 3. Investment Advisory Committee**215 **51-7a-301. Investment advisory committee -- Creation.**

216 (1) (a) There is created an investment advisory committee of seven members appointed  
217 as follows:

218 (i) one member appointed by the president of the University of Utah;

219 (ii) one member appointed by the president of Utah State University;

220 (iii) two members appointed by the state superintendent of public instruction;

221 (iv) one member appointed by the president of the Utah Education Association;

222 (v) one member appointed by the president of the Utah Parent Teachers Association;

223 and

224 (vi) one member appointed by the Board of Trustees of the School and Institutional  
225 Trust Lands Administration.

226 (b) In making appointments, the appointing authority shall appoint candidates with  
227 experience in securities, investments, or banking, or other experience that would aid the  
228 committee in fulfilling its responsibilities.

229 (2) (a) (i) Except as required by Subsection (2)(a)(ii), as terms of current committee  
230 members expire, the appointing authority shall appoint each new member or reappointed  
231 member to a four-year term.

232 (ii) The appointing authority shall, at the time of appointment or reappointment, adjust  
233 the length of terms to ensure that the terms of committee members are staggered so that  
234 approximately half of the committee is appointed every two years.

235 (b) When a vacancy occurs in the membership for any reason, the replacement shall be  
236 appointed for the unexpired term.

237 (3) The investment advisory committee shall meet at least quarterly.

238 (4) The investment advisory committee shall elect a chair and vice chair.

239 (5) (a) A committee member shall disclose any conflict of interest to the board.

240 (b) If the conflict involves a direct, personal financial interest in either the subject  
241 under consideration or an entity or asset that could be substantially affected by the outcome of  
242 committee advice, the member may not vote on the matter.

243 (6) (a) (i) Members who are not government employees shall receive no compensation  
244 or benefits for their services, but may receive per diem and expenses incurred in the



245 performance of the member's official duties at the rates established by the Division of Finance  
246 under Sections 63A-3-106 and 63A-3-107.

247 (ii) Members may decline to receive per diem and expenses for their service.

248 (b) (i) State government officer and employee members who do not receive salary, per  
249 diem, or expenses from their agency for their service may receive per diem and expenses  
250 incurred in the performance of their official duties from the committee at the rates established  
251 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

252 (ii) A state government member who is a member because of his state government  
253 position may not receive per diem or expenses for his service.

254 (iii) State government officer and employee members may decline to receive per diem  
255 and expenses for their service.

256 (c) (i) Local government members who do not receive salary, per diem, or expenses  
257 from the entity that they represent for their service may receive per diem and expenses incurred  
258 in the performance of their official duties at the rates established by the Division of Finance  
259 under Sections 63A-3-106 and 63A-3-107.

260 (ii) Local government members may decline to receive per diem and expenses for their  
261 service.

262 Section 9. Section **51-7a-302** is enacted to read:

263 **51-7a-302. Investment advisory committee -- Duties.**

264 (1) The investment advisory committee shall:

265 (a) review investment reports prepared by the state treasurer's office; and

266 (b) monitor portfolio composition and investment performance.

267 (2) The committee may prepare and present a report concerning the stability, income  
268 and growth of the funds, if any, to:

269 (a) the state treasurer;

270 (b) affected beneficiary representatives; and

271 (c) other interested parties.

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**Legislative Review Note**  
**as of 12-9-05 2:42 PM**

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**