

**POST-RETIREMENT BENEFITS TRUST FUND**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David Clark**

Senate Sponsor: Beverly Ann Evans

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**LONG TITLE**

**General Description:**

This bill establishes a trust fund to accumulate monies to pay post-retirement benefits.

**Highlighted Provisions:**

This bill:

- ▶ creates a trust fund to pay for post-retirement benefits;
- ▶ creates a board of trustees to act as the trustee of the trust; and
- ▶ establishes investment criteria for the state treasurer in investing the trust assets.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2006.

**Utah Code Sections Affected:**

**AMENDS:**

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

**ENACTS:**

**67-19d-101**, Utah Code Annotated 1953

**67-19d-102**, Utah Code Annotated 1953

**67-19d-201**, Utah Code Annotated 1953

**67-19d-202**, Utah Code Annotated 1953

**67-19d-301**, Utah Code Annotated 1953



67-19d-302, Utah Code Annotated 1953

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

Section 1. 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 Housing Corporation; ~~and~~

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

(6) the Post-Retirement Benefits Trust Fund.

Section 2. Section **67-19d-101** is enacted to read:

**CHAPTER 19d. POST-RETIREMENT BENEFITS TRUST FUND ACT**

**Part 1. General Provisions**

**67-19d-101. Title.**

This chapter is known as the "Post-Retirement Benefits Trust Fund Act."

Section 3. Section **67-19d-102** is enacted to read:

**67-19d-102. Definitions.**

As used in this chapter:

(1) "Board of trustees" or "board" means the board of trustees created in Section 67-19d-202.

(2) "Income" means all revenues from investments made by the state treasurer of the trust fund principal.

(3) "Trust fund" means the Post-Retirement Benefits Trust Fund created by Section 67-19d-201.

Section 4. Section **67-19d-201** is enacted to read:

**Part 2. Creation and Governance of the Post-Retirement Benefits Trust Fund**

**67-19d-201. Trust fund -- Creation -- Oversight.**

59           (1) There is created a post-retirement benefits trust fund entitled the "Post-Retirement  
60 Benefits Trust Fund."

61           (2) The fund consists of:

62           (a) revenue provided from an ongoing labor additive as defined in Subsection  
63 67-19d-202(2)(g);

64           (b) appropriations made to the fund by the Legislature, if any;

65           (c) income as defined in Section 67-19d-102; and

66           (d) other revenues received from other sources.

67           (3) The Division of Finance shall account for the receipt and expenditures of trust fund  
68 monies.

69           (4) (a) The state treasurer shall invest trust fund monies by following the procedures  
70 and requirements of Part 3, Trust Fund Investments.

71           (b) (i) The trust fund shall earn interest.

72           (ii) The state treasurer shall deposit all interest or other income earned from investment  
73 of the trust fund back into the trust fund.

74           (5) The board of trustees created in Section 67-19d-202 may expend monies from the  
75 trust fund for:

76           (a) the employer portion of the costs of the programs established in Sections 67-19-14  
77 through 67-19-14.4; and

78           (b) reasonable administrative costs that the board of trustees incurs in performing their  
79 duties as trustees of the trust fund.

80           (6) The board of trustees shall ensure that:

81           (a) monies deposited into the trust fund are irrevocable and are expended only for the  
82 employer portion of the costs of post-retirement benefits;

83           (b) assets of the trust fund are dedicated to providing benefits to retirees and their  
84 beneficiaries according to the terms of the post-retirement benefit plans established by statute;  
85 and

86           (c) creditors of the board of trustees and of employers liable for the post-retirement  
87 benefits may not seize, attach, or otherwise obtain assets of the trust fund.

88           Section 5. Section **67-19d-202** is enacted to read:

89           **67-19d-202. Board of trustees of the Post-Retirement Benefits Trust Fund.**

90 (1) (a) There is created a board of trustees of the Post-Retirement Benefits Trust Fund  
91 composed of three members:

92 (i) the state treasurer;

93 (ii) the director of the Division of Finance; and

94 (iii) the director of the Governor's Office of Planning and Budget.

95 (b) The state treasurer is chair of the board.

96 (c) Three members of the board are a quorum.

97 (d) (i) State government officer and employee members who do not receive salary, per  
98 diem, or expenses from their agency for their service may receive per diem and expenses  
99 incurred in the performance of their official duties from the board at the rates established by the  
100 Division of Finance under Sections 63A-3-106 and 63A-3-107.

101 (ii) State government officer and employee members may decline to receive per diem  
102 and expenses for their service.

103 (e) (i) Except as provided in Subsection (1)(e)(ii), the state treasurer shall staff the  
104 board of trustees.

105 (ii) The Division of Finance shall provide accounting services for the trust fund.

106 (2) The board shall:

107 (a) on behalf of the state, act as trustee of the trust fund and exercise the state's  
108 fiduciary responsibilities;

109 (b) meet at least twice per year;

110 (c) review and approve all policies, projections, rules, criteria, procedures, forms,  
111 standards, performance goals, and actuarial reports;

112 (d) review and approve the trust fund budget;

113 (e) review financial records of the trust fund, including trust fund receipts,  
114 expenditures, and investments;

115 (f) commission and obtain actuarial studies of the trust fund liabilities;

116 (g) establish labor additive rates to charge all federal, state, and other programs to  
117 cover:

118 (i) the annual required contribution as determined by actuary; and

119 (ii) the administrative expenses of the trust fund; and

120 (h) do any other things necessary to perform the state of Utah's fiduciary obligations

under the trust fund.

(3) The attorney general shall:

(a) act as legal counsel and provide legal representation to the board of trustees; and

(b) attend, or direct an attorney from the Office of the Attorney General to attend, each meeting of the board of trustees.

Section 6. Section **67-19d-301** is enacted to read:

### **Part 3. Trust Fund Investments**

#### **67-19d-301. Investment of Post-Retirement Benefits Trust Fund.**

(1) The state treasurer shall:

(a) invest the assets of the Post-Retirement Benefits Trust Fund with the primary goal of providing for the stability, income, and growth of the principal;

(b) in making investment decisions, consider:

(i) general economic conditions;

(ii) the possible effect of inflation or deflation;

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

(iv) the expected total return from income and the appreciation of capital;

(v) other resources of the beneficiaries; and

(vi) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

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

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

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

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

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

Section 7. Section **67-19d-302** is enacted to read:

**67-19d-302. State treasurer to follow "prudent investor" rule -- Standard of care.**

152           (1) The state treasurer shall invest and manage the trust fund assets as a prudent  
153 investor would, by:  
154           (a) considering the purposes, terms, distribution requirements, and other circumstances  
155 of the trust funds; and  
156           (b) exercising reasonable care, skill, and caution in order to meet the standard of care  
157 of a prudent investor.  
158           (2) In determining whether or not the state treasurer has met the standard of care of a  
159 prudent investor, the judge or finder of fact shall:  
160           (a) consider the state treasurer's actions in light of the facts and circumstances existing  
161 at the time of the investment decision or action, and not by hindsight; and  
162           (b) evaluate the state treasurer's investment and management decisions respecting  
163 individual assets:  
164           (i) not in isolation, but in the context of a trust fund portfolio as a whole; and  
165           (ii) as a part of an overall investment strategy that has risk and return objectives  
166 reasonably suited to the trust fund.  
167           Section 8. **Effective date.**  
168           This bill takes effect on July 1, 2006.

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**Legislative Review Note**  
**as of 2-7-06 6:48 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**

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**Fiscal Note**  
**Bill Number HB0381**

**Post-retirement Benefits Trust Fund**

*14-Feb-06*

*2:21 PM*

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**State Impact**

It is estimated that provisions of this bill can be implemented with existing resources. Future investment returns will depend on many factors including economic conditions and investment alternatives for the fund.

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**Individual and Business Impact**

No significant fiscal impact.

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**Office of the Legislative Fiscal Analyst**