

1 **POST-RETIREMENT BENEFITS TRUST FUND**

2 2007 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Keith Grover**

5 Senate Sponsor: Margaret Dayton

7 **LONG TITLE**

8 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

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

15 **Monies Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 This bill takes effect on July 1, 2007.

19 **Utah Code Sections Affected:**

20 **AMENDS:**

21 **51-7-2**, as last amended by Chapter 277, Laws of Utah 2006

22 **ENACTS:**

23 **67-19d-101**, Utah Code Annotated 1953

24 **67-19d-102**, Utah Code Annotated 1953

25 **67-19d-201**, Utah Code Annotated 1953

26 **67-19d-202**, Utah Code Annotated 1953

27 **67-19d-301**, Utah Code Annotated 1953



28 **67-19d-302**, Utah Code Annotated 1953



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

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

32 **51-7-2. Exemptions from chapter.**

33 The following funds are exempt from this chapter:

34 (1) funds invested in accordance with the participating employees' designation or
35 direction pursuant to a public employees' deferred compensation plan established and operated
36 in compliance with Section 457 of the Internal Revenue Code of 1986, as amended;

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

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

39 (4) funds of the Utah Housing Corporation;

40 (5) endowment funds of higher education institutions; ~~and~~

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

42 Enabling Act and the Utah Constitution[-]; and

43 (7) the Post-Retirement Benefits Trust Fund.

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

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

46 **Part 1. General Provisions**

47 **67-19d-101. Title.**

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

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

50 **67-19d-102. Definitions.**

51 As used in this chapter:

52 (1) "Board of trustees" or "board" means the board of trustees created in Section
53 67-19d-202.

54 (2) "Income" means the revenues received by the state treasurer from investments of
55 the trust fund principal.

56 (3) "Trust fund" means the Post-Retirement Benefits Trust Fund created by Section
57 67-19d-201.

58 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.

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

(2) The fund consists of:

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

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

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

(d) other revenues received from other sources.

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

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

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

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

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

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

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

(6) The board of trustees shall ensure that:

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

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

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

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

91 **67-19d-202. Board of trustees of the Post-Retirement Benefits Trust Fund.**

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

94 (i) the state treasurer;

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

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

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

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

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

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

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

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

108 (2) The board shall:

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

111 (b) meet at least twice per year;

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

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

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

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

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

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

121 (ii) the administrative expenses of the trust fund; and
122 (h) do any other things necessary to perform the state of Utah's fiduciary obligations
123 under the trust fund.

124 (3) The attorney general shall:

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

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

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

129 **Part 3. Trust Fund Investments**

130 **67-19d-301. Investment of Post-Retirement Benefits Trust Fund.**

131 (1) The state treasurer shall:

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

134 (b) in making investment decisions, consider:

135 (i) general economic conditions;

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

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

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

140 (v) other resources of the beneficiaries; and

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

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

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

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

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

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

152 Section 7. Section **67-19d-302** is enacted to read:
153 **67-19d-302. State treasurer to follow "prudent investor" rule -- Standard of care.**
154 (1) The state treasurer shall invest and manage the trust fund assets as a prudent
155 investor would, by:
156 (a) considering the purposes, terms, distribution requirements, and other circumstances
157 of the trust fund; and
158 (b) exercising reasonable care, skill, and caution in order to meet the standard of care
159 of a prudent investor.
160 (2) In determining whether or not the state treasurer has met the standard of care of a
161 prudent investor, the judge or finder of fact shall:
162 (a) consider the state treasurer's actions in light of the facts and circumstances existing
163 at the time of the investment decision or action, and not by hindsight; and
164 (b) evaluate the state treasurer's investment and management decisions respecting
165 individual assets:
166 (i) not in isolation, but in the context of a trust fund portfolio as a whole; and
167 (ii) as a part of an overall investment strategy that has risk and return objectives
168 reasonably suited to the trust fund.
169 Section 8. **Effective date.**
170 This bill takes effect on July 1, 2007.

Legislative Review Note
as of 11-15-06 4:48 PM

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-20-06 11:11 AM

The Retirement and Independent Entities Interim Committee recommended this bill.