

Representative Keith Grover proposes the following substitute bill:

STATE POST-RETIREMENT BENEFITS TRUST FUND

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keith Grover

Senate Sponsor: Margaret Dayton

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;
- ▶ establishes investment criteria for the state treasurer in investing the trust assets; and
- ▶ directs the Division of Finance to transfer certain monies into the fund.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

ENACTS:

67-19d-101, Utah Code Annotated 1953

67-19d-102, Utah Code Annotated 1953



- 26 **67-19d-201**, Utah Code Annotated 1953
- 27 **67-19d-202**, Utah Code Annotated 1953
- 28 **67-19d-301**, Utah Code Annotated 1953
- 29 **67-19d-302**, Utah Code Annotated 1953

30 **Uncodified Material Affected:**

31 ENACTS UNCODIFIED MATERIAL



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

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

35 **51-7-2. Exemptions from chapter.**

36 The following funds are exempt from this chapter:

- 37 (1) funds invested in accordance with the participating employees' designation or
- 38 direction pursuant to a public employees' deferred compensation plan established and operated
- 39 in compliance with Section 457 of the Internal Revenue Code of 1986, as amended;
- 40 (2) funds of the Workers' Compensation Fund;
- 41 (3) funds of the Utah State Retirement Board;
- 42 (4) funds of the Utah Housing Corporation;
- 43 (5) endowment funds of higher education institutions; [~~and~~]
- 44 (6) permanent and other land grant trust funds established pursuant to the Utah

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

46 (7) the State Post-Retirement Benefits Trust Fund.

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

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

49 **Part 1. General Provisions**

50 **67-19d-101. Title.**

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

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

53 **67-19d-102. Definitions.**

54 As used in this chapter:

- 55 (1) "Board of trustees" or "board" means the board of trustees created in Section
- 56 67-19d-202.

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

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

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

62 **Part 2. Creation and Governance of the Post-Retirement Benefits Trust Fund**
63 **67-19d-201. Trust fund -- Creation -- Oversight -- Dissolution.**

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

66 (2) The trust fund consists of:

67 (a) revenue provided from an ongoing labor additive as defined in Subsection
68 67-19d-202(2)(g);

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

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

71 (d) other revenues received from other sources.

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

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

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

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

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

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

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

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

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

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

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

93 (7) When all of the liabilities for which the trust fund was created are paid, the
94 Division of Finance shall transfer any assets remaining in the state trust fund into the
95 appropriate fund.

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

97 **67-19d-202. Board of trustees of the State Post-Retirement Benefits Trust Fund.**

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

100 (i) the state treasurer;

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

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

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

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

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

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

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

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

114 (2) The board shall:

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

117 (b) meet at least twice per year;

118 (c) review and approve all policies, projections, rules, criteria, procedures, forms,

119 standards, performance goals, and actuarial reports;
 120 (d) review and approve the trust fund budget;
 121 (e) review financial records of the trust fund, including trust fund receipts,
 122 expenditures, and investments;
 123 (f) commission and obtain actuarial studies of the trust fund liabilities;
 124 (g) establish labor additive rates to charge all federal, state, and other programs to
 125 cover:
 126 (i) the annual required contribution as determined by actuary; and
 127 (ii) the administrative expenses of the trust fund; and
 128 (h) do any other things necessary to perform the state of Utah's fiduciary obligations
 129 under the trust fund.

130 (3) The attorney general shall:
 131 (a) act as legal counsel and provide legal representation to the board of trustees; and
 132 (b) attend, or direct an attorney from the Office of the Attorney General to attend, each
 133 meeting of the board of trustees.

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

135 **Part 3. Trust Fund Investments**

136 **67-19d-301. Investment of State Post-Retirement Benefits Trust Fund.**

137 (1) The state treasurer shall invest the assets of the State Post-Retirement Benefits
 138 Trust Fund with the primary goal of providing for the stability, income, and growth of the
 139 principal.

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

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

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

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

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

148 **67-19d-302. State treasurer to follow "prudent investor" rule -- Standard of care.**

149 (1) The state treasurer shall invest and manage the trust fund assets as a prudent

150 investor would, by:

151 (a) considering the purposes, terms, distribution requirements, and other circumstances
152 of the trust fund; and

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

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

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

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

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

162 (ii) as a part of an overall investment strategy that has risk and return objectives
163 reasonably suited to the trust fund.

164 **Section 8. Transfer of earmarked funds.**

165 The Division of Finance shall:

166 (1) calculate interest on the net assets designated and set-aside by the Legislature as of
167 April 30, 2007, for the payment of post-retirement benefits for qualified retirees; and

168 (2) deposit both the net assets and interest income on these monies into the State
169 Post-Retirement Benefits Trust Fund as a beginning balance to the fund as of May 1, 2007.