

Representative Jim Nielson proposes the following substitute bill:

PERMANENT STATE TRUST FUND INVESTMENT

AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jim Nielson

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill addresses the investment of money in the permanent state trust fund.

Highlighted Provisions:

This bill:

- ▶ repeals a provision relating to the state treasurer's investment of money in the permanent state trust fund and replaces it with other provisions governing the investment of permanent state trust fund money;
- ▶ provides for requirements and criteria for the state treasurer's investment of permanent state trust fund money;
- ▶ requires the state treasurer to invest the money as a prudent investor would and establishes criteria for determining whether the treasurer has met that prudent investor standard;
- ▶ exempts funds of the permanent state trust fund from the State Money Management Act; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **51-7-2**, as last amended by Laws of Utah 2011, Chapter 46

31 **51-9-202**, as last amended by Laws of Utah 2011, Chapter 119

32 ENACTS:

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

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

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

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

37 REPEALS:

38 **51-7-12.1**, as enacted by Laws of Utah 2000, Chapter 351

39

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 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;

50 (5) endowment funds of higher education institutions;

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

52 Enabling Act and the Utah Constitution;

53 (7) the State Post-Retirement Benefits Trust Fund; [~~and~~]

54 (8) the funds of the Utah Educational Savings Plan[~~;~~]; and

55 (9) funds of the permanent state trust fund created by and operated under Utah

56 Constitution, Article XXII, Section 4.

57 Section 2. Section 51-7b-101 is enacted to read:

58 **CHAPTER 7b. INVESTMENT OF PERMANENT STATE TRUST FUND MONEY**

59 **Part 1. General Provisions**

60 **51-7b-101. Title.**

61 This chapter is known as "Investment of Permanent State Trust Fund Money."

62 Section 3. Section 51-7b-102 is enacted to read:

63 **51-7b-102. Definition.**

64 As used in this chapter, "permanent state trust fund" means the permanent state trust
65 fund created by and operated under Utah Constitution Article XXII, Section 4.

66 Section 4. Section 51-7b-201 is enacted to read:

67 **Part 2. State Treasurer Investment Duties**

68 **51-7b-201. Investment of money in the permanent state trust fund.**

69 (1) The state treasurer shall:

70 (a) invest money in the permanent state trust fund with the primary goal of providing
71 for the stability, income, and growth of the permanent state trust fund's principal;

72 (b) in making investment decisions, consider:

73 (i) general economic conditions;

74 (ii) the possible effect of inflation and deflation;

75 (iii) the role that each investment or course of action plays within the overall
76 permanent state trust fund portfolio;

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

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

79 and

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

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

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

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

88 (b) The treasurer may provide compensation to asset managers only from earnings
89 generated by the permanent state trust fund's investments.

90 Section 5. Section **51-7b-202** is enacted to read:

91 **51-7b-202. Prudent investor standard -- Determining whether standard met.**

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

94 (a) considering the purposes, terms, distribution requirements, and other circumstances
95 of the permanent state trust fund; and

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

98 (2) In determining whether the state treasurer has met the standard of care of a prudent
99 investor, a finder of fact shall:

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

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

104 (i) not in isolation, but in the context of the permanent state trust fund portfolio as a
105 whole; and

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

108 Section 6. Section **51-9-202** is amended to read:

109 **51-9-202. Permanent state trust fund.**

110 (1) Until July 1, 2003, 50% of all funds of every kind that are received by the state that
111 are related to the settlement agreement that the state entered into with leading tobacco
112 manufacturers on November 23, 1998, shall be deposited into the permanent state trust fund
113 created by and operated under Utah Constitution Article XXII, Section 4.

114 (2) On and after July 1, 2003 and until July 1, 2004 20% of the funds of any kind
115 received by the state that are related to the settlement agreement that the state entered into with
116 leading tobacco manufacturers shall be deposited into the permanent state trust fund created by
117 and operated under Utah Constitution Article XXII, Section 4.

118 (3) On and after July 1, 2004 and until July 1, 2005, 30% of all funds of any kind

119 received by the state that are related to the settlement agreement that the state entered into with
120 leading tobacco manufacturers shall be deposited into the General Fund Budget Reserve
121 Account created in Section 63J-1-312.

122 (4) On and after July 1, 2005 and until July 1, 2007, 25% of all funds of any kind
123 received by the state that are related to the settlement agreement that the state entered into with
124 leading tobacco manufacturers shall be deposited into the permanent state trust fund created by
125 and operated under Utah Constitution Article XXII, Section 4.

126 (5) On and after July 1, 2007, 40% of all funds of every kind that are received by the
127 state that are related to the settlement agreement that the state entered into with leading tobacco
128 manufacturers on November 23, 1998, shall be deposited into the General Fund and the
129 remaining funds deposited as directed.

130 (6) Funds in the permanent state trust fund shall be deposited or invested pursuant to
131 ~~[Section 51-7-12.1]~~ Chapter 7b, Investment of Permanent State Trust Fund Money.

132 (7) (a) In accordance with Utah Constitution Article XXII, Section 4, the interest and
133 dividends earned annually from the permanent state trust fund shall be deposited in the General
134 Fund. There shall be transferred on an ongoing basis from the General Fund to the permanent
135 state trust fund created under Utah Constitution Article XXII, Section 4, an amount equal to
136 50% of the interest and dividends earned annually from the permanent state trust fund. The
137 amount transferred into the fund under this Subsection (7)(a) shall be treated as principal.

138 (b) Any annual interest or dividends earned from the permanent state trust fund that
139 remain in the General Fund after Subsection (7)(a) may be appropriated by the Legislature.

140 (c) Any realized or unrealized gains or losses on investments in the permanent state
141 trust fund shall remain in the permanent state trust fund.

142 (8) This section does not apply to funds deposited under Chapter 9, Part 3,
143 Infrastructure and Economic Diversification Investment Account and Deposit of Certain
144 Severance Taxes into Permanent State Trust Fund Act, into the permanent state trust fund.

145 **Section 7. Repealer.**

146 This bill repeals:

147 **Section 51-7-12.1, Deposit or investment of Tobacco Settlement Endowment --**
148 **Authorized deposits and investments -- Asset manager.**