

MONEY MANAGEMENT ACT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Knotwell

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the State Money Management Act by amending provisions relating to money management.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ specifies the term to final maturity for certain deposits or investments that are invested by a public agency insurance mutual;
- ▶ authorizes the state treasurer, county, city, and town treasurers, the clerk or treasurer of each school district, and other public treasurers to procure crime or theft insurance;
- ▶ modifies political party requirements for members of the State Money Management Council;
- ▶ provides that the State Money Management Council may authorize an exception to certain maturity dates in certain circumstances; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **51-7-3**, as last amended by Laws of Utah 2013, Chapters 204 and 388

31 **51-7-11**, as last amended by Laws of Utah 2015, Chapter 171

32 **51-7-15**, as last amended by Laws of Utah 2013, Chapters 278 and 388

33 **51-7-16**, as last amended by Laws of Utah 2010, Chapter 286

34 **51-7-23**, as last amended by Laws of Utah 2015, Chapter 171

35

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

37 Section 1. Section **51-7-3** is amended to read:

38 **51-7-3. Definitions.**

39 As used in this chapter:

40 (1) "Agent" means "agent" as defined in Section **61-1-13**.

41 (2) "Certified dealer" means:

42 (a) a primary reporting dealer recognized by the Federal Reserve Bank of New York

43 who is certified by the director as having met the applicable criteria of council rule; or

44 (b) a broker dealer who:

45 (i) has and maintains an office and a resident registered principal in the state;

46 (ii) meets the capital requirements established by council rules;

47 (iii) meets the requirements for good standing established by council rule; and

48 (iv) is certified by the director as meeting quality criteria established by council rule.

49 (3) "Certified investment adviser" means a federal covered adviser, as defined in
50 Section **61-1-13**, or an investment adviser, as defined in Section **61-1-13**, who is certified by
51 the director as having met the applicable criteria of council rule.

52 (4) "Commissioner" means the commissioner of financial institutions.

53 (5) "Council" means the State Money Management Council created by Section
54 **51-7-16**.

55 (6) "Covered bond" means a publicly placed debt security issued by a bank, other
56 regulated financial institution, or a subsidiary of either that is secured by a pool of loans that
57 remain on the balance sheet of the issuer or its subsidiary.

58 (7) "Director" means the director of the Utah State Division of Securities of the

59 Department of Commerce.

60 (8) (a) "Endowment funds" means gifts, devises, or bequests of property of any kind
61 donated to a higher education institution from any source.

62 (b) "Endowment funds" does not mean money used for the general operation of a
63 higher education institution that is received by the higher education institution from:

64 (i) state appropriations;

65 (ii) federal contracts;

66 (iii) federal grants;

67 (iv) private research grants; and

68 (v) tuition and fees collected from students.

69 (9) "First tier commercial paper" means commercial paper rated by at least two
70 nationally recognized statistical rating organizations in the highest short-term rating category.

71 (10) "Funds functioning as endowments" means funds, regardless of source, whose
72 corpus is intended to be held in perpetuity by formal institutional designation according to the
73 institution's policy for designating those funds.

74 (11) "GASB" or "Governmental Accounting Standards Board" means the
75 Governmental Accounting Standards Board that is responsible for accounting standards used
76 by public entities.

77 (12) "Hard put" means an unconditional sell-back provision or a redemption provision
78 applicable at issue to a note or bond, allowing holders to sell their holdings back to the issuer
79 or to an equal or higher-rated third party provider at specific intervals and specific prices
80 determined at the time of issuance.

81 (13) "Higher education institution" means the institutions specified in Section
82 [53B-1-102](#).

83 (14) "Investment adviser representative" is as defined in Section [61-1-13](#).

84 (15) (a) "Investment agreement" means any written agreement that has specifically
85 negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate.

86 (b) "Investment agreement" includes any agreement to supply investments on one or
87 more future dates.

88 (16) "Local government" means a county, municipality, school district, local district
89 under Title 17B, Limited Purpose Local Government Entities - Local Districts, special service

90 district under Title 17D, Chapter 1, Special Service District Act, or any other political
91 subdivision of the state.

92 (17) "Market value" means market value as defined in the Master Repurchase
93 Agreement.

94 (18) "Master Repurchase Agreement" means the current standard Master Repurchase
95 Agreement approved by the Public Securities Association or by any successor organization.

96 (19) "Maximum amount" means, with respect to qualified depositories, the total
97 amount of:

- 98 (a) deposits in excess of the federal deposit insurance limit; and
- 99 (b) nonqualifying repurchase agreements.

100 (20) "Money market mutual fund" means an open-end managed investment fund:

- 101 (a) that complies with the diversification, quality, and maturity requirements of Rule
102 2a-7 or any successor rule of the Securities and Exchange Commission applicable to money
103 market mutual funds; and
- 104 (b) that assesses no sales load on the purchase of shares and no contingent deferred
105 sales charge or other similar charges, however designated.

106 (21) "Nationally recognized statistical rating organization" means an organization that
107 has been designated as a nationally recognized statistical rating organization by the Securities
108 and Exchange Commission's Division of Market Regulation.

109 (22) "Nonqualifying repurchase agreement" means a repurchase agreement evidencing
110 indebtedness of a qualified depository arising from the transfer of obligations of the United
111 States Treasury or other authorized investments to public treasurers that is:

- 112 (a) evidenced by a safekeeping receipt issued by the qualified depository;
- 113 (b) included in the depository's maximum amount of public funds; and
- 114 (c) valued and maintained at market value plus an appropriate margin collateral
115 requirement based upon the term of the agreement and the type of securities acquired.

116 (23) "Operating funds" means current balances and other funds that are to be disbursed
117 for operation of the state government or any of its boards, commissions, institutions,
118 departments, divisions, agencies, or other similar instrumentalities, or any county, city, school
119 district, political subdivision, or other public body.

120 (24) "Permanent funds" means funds whose principal may not be expended, the

121 earnings from which are to be used for purposes designated by law.

122 (25) "Permitted depository" means any out-of-state financial institution that meets
123 quality criteria established by rule of the council.

124 (26) "Public funds" means money, funds, and accounts, regardless of the source from
125 which the money, funds, and accounts are derived, that are owned, held, or administered by the
126 state or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus,
127 laboratories, or other similar instrumentalities, or any county, city, school district, political
128 subdivision, or other public body.

129 (27) (a) "Public money" means "public funds."

130 (b) "Public money," as used in Article VII, Sec. 15, Utah Constitution, means the same
131 as "state funds."

132 (28) "Public treasurer" includes the state treasurer and the official of any state board,
133 commission, institution, department, division, agency, or other similar instrumentality, or of
134 any county, city, school district, charter school, political subdivision, or other public body who
135 has the responsibility for the safekeeping and investment of any public funds.

136 (29) "Qualified depository" means a Utah depository institution or an out-of-state
137 depository institution, as those terms are defined in Section 7-1-103, that is authorized to
138 conduct business in this state under Section 7-1-702 or Title 7, Chapter 19, Acquisition of
139 Failing Depository Institutions or Holding Companies, whose deposits are insured by an
140 agency of the federal government and that has been certified by the commissioner of financial
141 institutions as having met the requirements established under this chapter and the rules of the
142 council to be eligible to receive deposits of public funds.

143 (30) "Qualifying repurchase agreement" means a repurchase agreement evidencing
144 indebtedness of a financial institution or government securities dealer acting as principal
145 arising from the transfer of obligations of the United States Treasury or other authorized
146 investments to public treasurers only if purchased securities are:

147 (a) delivered to the public treasurer's safekeeping agent or custodian as contemplated
148 by Section 7 of the Master Repurchase Agreement; and

149 (b) valued and maintained at market value plus an appropriate margin collateral
150 requirement based upon the term of the agreement and the type of securities acquired.

151 (31) "Reciprocal deposits" means deposits that are initially deposited into a qualified

152 depository and are then redeposited through a deposit account registry service:

153 (a) in one or more FDIC-insured depository institutions in amounts up to the relevant
154 FDIC-insured deposit limit for a depositor in each depository institution; and

155 (b) in exchange for reciprocal FDIC-insured deposits made through the deposit account
156 registry service to the qualified depository.

157 (32) "Securities division" means Utah's Division of Securities created within the
158 Department of Commerce by Section 13-1-2.

159 (33) "State funds" means:

160 (a) public money raised by operation of law for the support and operation of the state
161 government; and

162 (b) all other money, funds, and accounts, regardless of the source from which the
163 money, funds, or accounts are derived, that are owned, held, or administered by the state or any
164 of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories,
165 or other similar instrumentalities.

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

167 **51-7-11. Authorized deposits or investments of public funds.**

168 (1) (a) Except as provided in Subsections (1)(b) and (1)(c), a public treasurer shall
169 conduct investment transactions through qualified depositories, certified dealers, or directly
170 with issuers of the investment securities.

171 (b) A public treasurer may designate a certified investment adviser to make trades on
172 behalf of the public treasurer.

173 (c) A public treasurer may make a deposit in accordance with Section 53B-7-601 in a
174 foreign depository institution as defined in Section 7-1-103.

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

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

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

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

182 (i) Government National Mortgage Association mortgage pools;

- 183 (ii) Federal Home Loan Mortgage Corporation mortgage pools;
184 (iii) Federal National Mortgage Corporation mortgage pools;
185 (iv) Small Business Administration loan pools;
186 (v) Federal Agriculture Mortgage Corporation pools; or
187 (vi) other investments authorized by this section;
- 188 (c) qualifying repurchase agreements and reverse repurchase agreements with certified
189 dealers, permitted depositories, or qualified depositories using collateral consisting of:
- 190 (i) Government National Mortgage Association mortgage pools;
191 (ii) Federal Home Loan Mortgage Corporation mortgage pools;
192 (iii) Federal National Mortgage Corporation mortgage pools;
193 (iv) Small Business Administration loan pools; or
194 (v) other investments authorized by this section;
- 195 (d) commercial paper that is classified as "first tier" by two nationally recognized
196 statistical rating organizations, which has a remaining term to maturity of:
- 197 (i) 270 days or fewer for paper issued under 15 U.S.C. Sec. 77c(a)(3); or
198 (ii) 365 days or fewer for paper issued under 15 U.S.C. Sec. 77d(2);
199 (e) bankers' acceptances that:
- 200 (i) are eligible for discount at a Federal Reserve bank; and
201 (ii) have a remaining term to maturity of 270 days or fewer;
202 (f) fixed rate negotiable deposits issued by a permitted depository that have a
203 remaining term to maturity of 365 days or fewer;
- 204 (g) obligations of the United States Treasury, including United States Treasury bills,
205 United States Treasury notes, and United States Treasury bonds that, unless the funds invested
206 are pledged or otherwise deposited in an irrevocable trust escrow account, have a remaining
207 term to final maturity of:
- 208 (i) five years or less; ~~or~~
209 (ii) if the funds are invested by an institution of higher education as defined in Section
210 [53B-3-102](#), a city of the first class, or a county of the first class, 10 years or less; or
211 (iii) if the funds are invested by a public agency insurance mutual, as defined in
212 Subsection [31A-1-103\(7\)\(a\)](#), 20 years or less;
- 213 (h) obligations other than mortgage pools and other mortgage derivative products that:

214 (i) are issued by, or fully guaranteed as to principal and interest by, the following
215 agencies or instrumentalities of the United States in which a market is made by a primary
216 reporting government securities dealer, unless the agency or instrumentality has become private
217 and is no longer considered to be a government entity:

- 218 (A) Federal Farm Credit banks;
- 219 (B) Federal Home Loan banks;
- 220 (C) Federal National Mortgage Association;
- 221 (D) Federal Home Loan Mortgage Corporation;
- 222 (E) Federal Agriculture Mortgage Corporation; and
- 223 (F) Tennessee Valley Authority; and

224 (ii) unless the funds invested are pledged or otherwise deposited in an irrevocable trust
225 escrow account, have a remaining term to final maturity of:

- 226 (A) five years or less; [~~or~~]
- 227 (B) if the funds are invested by an institution of higher education as defined in Section
228 [53B-3-102](#), a city of the first class, or a county of the first class, 10 years or less; or

229 (C) if the funds are invested by a public agency insurance mutual, as defined in
230 Subsection [31A-1-103\(7\)\(a\)](#), 20 years or less;

231 (i) fixed rate corporate obligations that:

- 232 (i) are rated "A" or higher or the equivalent of "A" or higher by two nationally
233 recognized statistical rating organizations;
- 234 (ii) are senior unsecured or secured obligations of the issuer, excluding covered bonds;
- 235 (iii) are publicly traded; and
- 236 (iv) have a remaining term to final maturity of 15 months or less or are subject to a
237 hard put at par value or better, within 365 days;

238 (j) tax anticipation notes and general obligation bonds of the state or a county,
239 incorporated city or town, school district, or other political subdivision of the state, including
240 bonds offered on a when-issued basis without regard to the limitations described in Subsection
241 (7) that, unless the funds invested are pledged or otherwise deposited in an irrevocable trust
242 escrow account, have a remaining term to final maturity of:

- 243 (i) five years or less; [~~or~~]
- 244 (ii) if the funds are invested by an institution of higher education as defined in Section

245 [53B-3-102](#), a city of the first class, or a county of the first class, 10 years or less; or
246 (iii) if the funds are invested by a public agency insurance mutual, as defined in
247 Subsection [31A-1-103\(7\)\(a\)](#), 20 years or less;
248 (k) bonds, notes, or other evidence of indebtedness of a county, incorporated city or
249 town, school district, or other political subdivision of the state that are payable from
250 assessments or from revenues or earnings specifically pledged for payment of the principal and
251 interest on these obligations, including bonds offered on a when-issued basis without regard to
252 the limitations described in Subsection (7) that, unless the funds invested are pledged or
253 otherwise deposited in an irrevocable trust escrow account, have a remaining term to final
254 maturity of:
255 (i) five years or less; [~~or~~]
256 (ii) if the funds are invested by an institution of higher education as defined in Section
257 [53B-3-102](#), a city of the first class, or a county of the first class, 10 years or less; or
258 (iii) if the funds are invested by a public agency insurance mutual, as defined in
259 Subsection [31A-1-103\(7\)\(a\)](#), 20 years or less;
260 (l) shares or certificates in a money market mutual fund;
261 (m) variable rate negotiable deposits that:
262 (i) are issued by a qualified depository or a permitted depository;
263 (ii) are repriced at least semiannually; and
264 (iii) have a remaining term to final maturity not to exceed three years;
265 (n) variable rate securities that:
266 (i) (A) are rated "A" or higher or the equivalent of "A" or higher by two nationally
267 recognized statistical rating organizations;
268 (B) are senior unsecured or secured obligations of the issuer, excluding covered bonds;
269 (C) are publicly traded;
270 (D) are repriced at least semiannually; and
271 (E) have a remaining term to final maturity not to exceed three years or are subject to a
272 hard put at par value or better, within 365 days;
273 (ii) are not mortgages, mortgage-backed securities, mortgage derivative products, or a
274 security making unscheduled periodic principal payments other than optional redemptions; and
275 (o) reciprocal deposits made in accordance with Subsection [51-7-17\(4\)](#).

276 (4) The following public funds are exempt from the requirements of Subsection (3):

277 (a) the Employers' Reinsurance Fund created in Section 34A-2-702;

278 (b) the Uninsured Employers' Fund created in Section 34A-2-704;

279 (c) a local government other post-employment benefits trust fund under Section

280 51-7-12.2; and

281 (d) a nonnegotiable deposit made in accordance with Section 53B-7-601 in a foreign

282 depository institution as defined in Section 7-1-103.

283 (5) If any of the deposits authorized by Subsection (3)(a) are negotiable or
284 nonnegotiable large time deposits issued in amounts of \$100,000 or more, the interest shall be
285 calculated on the basis of the actual number of days divided by 360 days.

286 (6) A public treasurer may maintain fully insured deposits in demand accounts in a
287 federally insured nonqualified depository only if a qualified depository is not reasonably
288 convenient to the entity's geographic location.

289 (7) Except as provided under Subsections (3)(j) and (k), the public treasurer shall
290 ensure that all purchases and sales of securities are settled within:

291 (a) 15 days of the trade date for outstanding issues; and

292 (b) 30 days for new issues.

293 Section 3. Section 51-7-15 is amended to read:

294 **51-7-15. Bonds of state treasurer and other public treasurers -- Reports to**
295 **council.**

296 (1) (a) The state treasurer, county, city, and town treasurers, the clerk or treasurer of
297 each school district, and other public treasurers that the council designates by rule shall be
298 bonded or may procure crime or theft insurance as allowed in Section 17-16-11 in an amount
299 of not less than that established by the council.

300 (b) The council shall base the minimum bond amount or crime or theft insurance as
301 allowed in Section 17-16-11 on the amount of public funds normally in the treasurer's
302 possession or control.

303 (2) (a) When a public treasurer deposits or invests public funds as authorized by this
304 chapter, the public treasurer and the public treasurer's bondsmen or insurers are not liable for
305 any loss of public funds invested or deposited unless the loss is caused by the malfeasance of
306 the public treasurer or a member of the public treasurer's staff.

307 (b) A public treasurer and the public treasurer's bondsmen or insurers are liable for a
308 loss for any reason from deposits or investments not made in conformity with this chapter and
309 the rules of the council.

310 (3) (a) A public treasurer shall file a written report with the council on or before January
311 31 and July 31 of each year.

312 (b) The report shall contain:

313 (i) the information about the deposits and investments of that public treasurer during
314 the preceding six months ending December 31 and June 30, respectively, that the council
315 requires by rule; and

316 (ii) information detailing the nature and extent of interest rate contracts permitted by
317 Subsection 51-7-17(3).

318 (c) A public treasurer shall make copies of the report available to the public at the
319 public treasurer's office during normal business hours.

320 Section 4. Section **51-7-16** is amended to read:

321 **51-7-16. State Money Management Council -- Members -- Terms -- Vacancies --**
322 **Chair and vice chair-- Executive secretary -- Meetings -- Quorum -- Members' disclosure**
323 **of interests -- Per diem and expenses.**

324 (1) (a) There is created a State Money Management Council composed of five
325 members appointed by the governor after consultation with the state treasurer and with the
326 consent of the Senate.

327 (b) The members of the council shall be qualified by training and experience in the
328 field of investment or finance as follows:

329 (i) at least one member, but not more than two members, shall be experienced in the
330 banking business;

331 (ii) at least one member, but not more than two members, shall be an elected treasurer;

332 (iii) at least one member, but not more than two members, shall be an appointed public
333 treasurer; and

334 (iv) two members, but not more than two members, shall be experienced in the field of
335 investment.

336 [~~(c) No more than three members of the council may be from the same political party.~~]

337 (c) The members of the council shall be appointed without regard to the members'

338 political party affiliation.

339 (2) (a) Except as required by Subsection (2)(b), the council members shall be appointed
340 for terms of four years.

341 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
342 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
343 council members are staggered so that approximately half of the council is appointed every two
344 years.

345 (c) When a vacancy occurs in the membership for any reason, the replacement shall be
346 appointed for the unexpired term.

347 (d) All members shall serve until their successors are appointed and qualified.

348 (3) (a) The council members shall elect a chair and vice chair.

349 (b) The state treasurer shall serve as executive secretary of the council without vote.

350 (4) (a) The council shall meet at least once per quarter at a regular date to be fixed by
351 the council and at other times at the call of the chair, the state treasurer, or any two members of
352 the council.

353 (b) Three members are a quorum for the transaction of business.

354 (c) Actions of the council require a vote of a majority of those present.

355 (d) All meetings of the council and records of its proceedings are open for inspection
356 by the public at the state treasurer's office during regular business hours except for:

357 (i) reports of the commissioner of financial institutions concerning the identity,
358 liquidity, or financial condition of qualified depositories and the amount of public funds each is
359 eligible to hold; and

360 (ii) reports of the director concerning the identity, liquidity, or financial condition of
361 certified dealers.

362 (5) (a) Each member of the council shall file a sworn or written statement with the
363 lieutenant governor that discloses any position or employment or ownership interest that he has
364 in any financial institution or investment organization.

365 (b) Each member shall file the statement required by this Subsection (5) when he
366 becomes a member of the council and when substantial changes in his position, employment,
367 or ownership interests occur.

368 (6) A member may not receive compensation or benefits for the member's service, but

369 may receive per diem and travel expenses in accordance with:

370 (a) Section [63A-3-106](#);

371 (b) Section [63A-3-107](#); and

372 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and

373 [63A-3-107](#).

374 Section 5. Section **51-7-23** is amended to read:

375 **51-7-23. Transition of investments previously authorized.**

376 (1) Any investment held by a public treasurer that as of June 30, 2015, is not in
377 compliance with the provisions of this chapter is subject to review by the council.

378 (2) (a) No later than July 31, 2015, a public treasurer who holds an investment
379 described in Subsection (1) shall provide the council a written report that outlines a reasonable
380 plan to bring the investment into compliance.

381 (b) A plan described in Subsection (2)(a) is subject to annual review by the council.

382 (c) The council may authorize, with substantial justification, an exception to the
383 five-year maturity requirements of Section [51-7-11](#).

Legislative Review Note
Office of Legislative Research and General Counsel