

HB0268S01 compared with HB0268

~~{deleted text}~~ shows text that was in HB0268 but was deleted in HB0268S01.

Inserted text shows text that was not in HB0268 but was inserted into HB0268S01.

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Representative John Knotwell proposes the following substitute bill:

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

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~~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

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

51-7-3. Definitions.

As used in this chapter:

- (1) "Agent" means "agent" as defined in Section 61-1-13.
- (2) "Certified dealer" means:
 - (a) a primary reporting dealer recognized by the Federal Reserve Bank of New York who is certified by the director as having met the applicable criteria of council rule; or
 - (b) a broker dealer who:
 - (i) has and maintains an office and a resident registered principal in the state;
 - (ii) meets the capital requirements established by council rules;
 - (iii) meets the requirements for good standing established by council rule; and
 - (iv) is certified by the director as meeting quality criteria established by council rule.
- (3) "Certified investment adviser" means a federal covered adviser, as defined in Section 61-1-13, or an investment adviser, as defined in Section 61-1-13, who is certified by

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the director as having met the applicable criteria of council rule.

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

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

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

(7) "Director" means the director of the Utah State Division of Securities of the Department of Commerce.

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

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

- (i) state appropriations;
- (ii) federal contracts;
- (iii) federal grants;
- (iv) private research grants; and
- (v) tuition and fees collected from students.

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

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

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

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

(13) "Higher education institution" means the institutions specified in Section

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53B-1-102.

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

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

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

(16) "Local government" means a county, municipality, school district, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, special service district under Title 17D, Chapter 1, Special Service District Act, or any other political subdivision of the state.

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

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

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

(a) deposits in excess of the federal deposit insurance limit; and

(b) nonqualifying repurchase agreements.

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

(a) that complies with the diversification, quality, and maturity requirements of Rule 2a-7 or any successor rule of the Securities and Exchange Commission applicable to money market mutual funds; and

(b) that assesses no sales load on the purchase of shares and no contingent deferred sales charge or other similar charges, however designated.

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

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

(a) evidenced by a safekeeping receipt issued by the qualified depository;

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(b) included in the depository's maximum amount of public funds; and

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

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

(24) "Permanent funds" means funds whose principal may not be expended, the earnings from which are to be used for purposes designated by law.

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

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

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

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

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

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

(30) "Qualifying repurchase agreement" means a repurchase agreement evidencing

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indebtedness of a financial institution or government securities dealer acting as principal arising from the transfer of obligations of the United States Treasury or other authorized investments to public treasurers only if purchased securities are:

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

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

(31) "Reciprocal deposits" means deposits that are initially deposited into a qualified depository and are then redeposited through a deposit account registry service:

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

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

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

(33) "State funds" means:

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

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

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

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

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

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

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

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

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

- (a) negotiable or nonnegotiable deposits of qualified depositories;
- (b) qualifying or nonqualifying repurchase agreements and reverse repurchase agreements with qualified depositories using collateral consisting of:
 - (i) Government National Mortgage Association mortgage pools;
 - (ii) Federal Home Loan Mortgage Corporation mortgage pools;
 - (iii) Federal National Mortgage Corporation mortgage pools;
 - (iv) Small Business Administration loan pools;
 - (v) Federal Agriculture Mortgage Corporation pools; or
 - (vi) other investments authorized by this section;
- (c) qualifying repurchase agreements and reverse repurchase agreements with certified dealers, permitted depositories, or qualified depositories using collateral consisting of:
 - (i) Government National Mortgage Association mortgage pools;
 - (ii) Federal Home Loan Mortgage Corporation mortgage pools;
 - (iii) Federal National Mortgage Corporation mortgage pools;
 - (iv) Small Business Administration loan pools; or
 - (v) other investments authorized by this section;
 - (d) commercial paper that is classified as "first tier" by two nationally recognized statistical rating organizations, which has a remaining term to maturity of:
 - (i) 270 days or fewer for paper issued under 15 U.S.C. Sec. 77c(a)(3); or
 - (ii) 365 days or fewer for paper issued under 15 U.S.C. Sec. 77d(2);
 - (e) bankers' acceptances that:
 - (i) are eligible for discount at a Federal Reserve bank; and
 - (ii) have a remaining term to maturity of 270 days or fewer;
 - (f) fixed rate negotiable deposits issued by a permitted depository that have a remaining term to maturity of 365 days or fewer;
 - (g) obligations of the United States Treasury, including United States Treasury bills, United States Treasury notes, and United States Treasury bonds that, unless the funds invested

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are pledged or otherwise deposited in an irrevocable trust escrow account, have a remaining term to final maturity of:

(i) five years or less; [~~or~~]

(ii) if the funds are invested by an institution of higher education as defined in Section 53B-3-102, a city of the first class, or a county of the first class, 10 years or less; or

(iii) if the funds are invested by a public agency insurance mutual, as defined in Subsection 31A-1-103(7)(a), 20 years or less;

(h) obligations other than mortgage pools and other mortgage derivative products that:

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

(A) Federal Farm Credit banks;

(B) Federal Home Loan banks;

(C) Federal National Mortgage Association;

(D) Federal Home Loan Mortgage Corporation;

(E) Federal Agriculture Mortgage Corporation; and

(F) Tennessee Valley Authority; and

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

(A) five years or less; [~~or~~]

(B) if the funds are invested by an institution of higher education as defined in Section 53B-3-102, a city of the first class, or a county of the first class, 10 years or less; or

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

(i) fixed rate corporate obligations that:

(i) are rated "A" or higher or the equivalent of "A" or higher by two nationally recognized statistical rating organizations;

(ii) are senior unsecured or secured obligations of the issuer, excluding covered bonds;

(iii) are publicly traded; and

(iv) have a remaining term to final maturity of 15 months or less or are subject to a

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hard put at par value or better, within 365 days;

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

(i) five years or less; [~~or~~]

(ii) if the funds are invested by an institution of higher education as defined in Section 53B-3-102, a city of the first class, or a county of the first class, 10 years or less; or

(iii) if the funds are invested by a public agency insurance mutual, as defined in Subsection 31A-1-103(7)(a), 20 years or less;

(k) bonds, notes, or other evidence of indebtedness of a county, incorporated city or town, school district, or other political subdivision of the state that are payable from assessments or from revenues or earnings specifically pledged for payment of the principal and interest on these obligations, including bonds offered on a when-issued basis without regard to the limitations described in Subsection (7) that, unless the funds invested are pledged or otherwise deposited in an irrevocable trust escrow account, have a remaining term to final maturity of:

(i) five years or less; [~~or~~]

(ii) if the funds are invested by an institution of higher education as defined in Section 53B-3-102, a city of the first class, or a county of the first class, 10 years or less; or

(iii) if the funds are invested by a public agency insurance mutual, as defined in Subsection 31A-1-103(7)(a), 20 years or less;

(l) shares or certificates in a money market mutual fund;

(m) variable rate negotiable deposits that:

(i) are issued by a qualified depository or a permitted depository;

(ii) are repriced at least semiannually; and

(iii) have a remaining term to final maturity not to exceed three years;

(n) variable rate securities that:

(i) (A) are rated "A" or higher or the equivalent of "A" or higher by two nationally recognized statistical rating organizations;

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(B) are senior unsecured or secured obligations of the issuer, excluding covered bonds;
(C) are publicly traded;
(D) are repriced at least semiannually; and
(E) have a remaining term to final maturity not to exceed three years or are subject to a hard put at par value or better, within 365 days;

(ii) are not mortgages, mortgage-backed securities, mortgage derivative products, or a security making unscheduled periodic principal payments other than optional redemptions; and

(o) reciprocal deposits made in accordance with Subsection 51-7-17(4).

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

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

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

(c) a local government other post-employment benefits trust fund under Section 51-7-12.2; and

(d) a nonnegotiable deposit made in accordance with Section 53B-7-601 in a foreign depository institution as defined in Section 7-1-103.

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

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

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

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

(b) 30 days for new issues.

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

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

(1) (a) The state treasurer, county, city, and town treasurers, the clerk or treasurer of each school district, and other public treasurers that the council designates by rule shall be bonded or may procure crime or theft insurance as allowed in Section 17-16-11 in an amount

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of not less than that established by the council.

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

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

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

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

(b) The report shall contain:

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

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

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

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

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

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

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

~~(i) at least one member, but not more than two members, shall be experienced in the~~

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banking business;

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

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

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

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

~~—— (c) The members of the council shall be appointed without regard to the members' political party affiliation.~~

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

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

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

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

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

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

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

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

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

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

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

~~—— (ii) reports of the director concerning the identity, liquidity, or financial condition of~~

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~~certified dealers:~~

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

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

~~—— (6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:~~

~~—— (a) Section 63A-3-106;~~

~~—— (b) Section 63A-3-107; and~~

~~—— (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.~~

~~—— Section 5.} Section 51-7-23 is amended to read:~~

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

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

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

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

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

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Legislative Review Note

Office of Legislative Research and General Counsel†