

MONEY MANAGEMENT ACT AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Melissa G. Ballard

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill modifies the Money Management Act by amending provisions relating to the investment of public funds.

Highlighted Provisions:

This bill:

- ▶ authorizes public funds to be invested in negotiable brokered certificates of deposit, subject to rules made by the State Money Management Council; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

51-7-11, as last amended by Laws of Utah 2018, Chapter 207

51-7-15, as last amended by Laws of Utah 2017, Chapter 338

51-7-17, as last amended by Laws of Utah 2015, Chapter 164

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

Section 1. Section **51-7-11** is amended to read:



28 **51-7-11. Authorized deposits or investments of public funds.**

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

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

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

36 (d) The state treasurer is exempt from the requirement to conduct investment
37 transactions through a certified dealer under Subsection (1)(a).

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

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

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

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

45 (i) Government National Mortgage Association mortgage pools;

46 (ii) Federal Home Loan Mortgage Corporation mortgage pools;

47 (iii) Federal National Mortgage Corporation mortgage pools;

48 (iv) Small Business Administration loan pools;

49 (v) Federal Agriculture Mortgage Corporation pools; or

50 (vi) other investments authorized by this section;

51 (c) qualifying repurchase agreements and reverse repurchase agreements with certified
52 dealers, permitted depositories, or qualified depositories using collateral consisting of:

53 (i) Government National Mortgage Association mortgage pools;

54 (ii) Federal Home Loan Mortgage Corporation mortgage pools;

55 (iii) Federal National Mortgage Corporation mortgage pools;

56 (iv) Small Business Administration loan pools; or

57 (v) other investments authorized by this section;

58 (d) commercial paper that is classified as "first tier" by two nationally recognized

- 59 statistical rating organizations, which has a remaining term to maturity of:
- 60 (i) 270 days or fewer for paper issued under 15 U.S.C. Sec. 77c(a)(3); or
- 61 (ii) 365 days or fewer for paper issued under 15 U.S.C. Sec. 77d(2);
- 62 (e) bankers' acceptances that:
- 63 (i) are eligible for discount at a Federal Reserve bank; and
- 64 (ii) have a remaining term to maturity of 270 days or fewer;
- 65 (f) fixed rate negotiable deposits issued by a permitted depository that have a
- 66 remaining term to maturity of 365 days or fewer;
- 67 (g) obligations of the United States Treasury, including United States Treasury bills,
- 68 United States Treasury notes, and United States Treasury bonds that, unless the funds invested
- 69 are pledged or otherwise deposited in an irrevocable trust escrow account, have a remaining
- 70 term to final maturity of:
- 71 (i) five years or less;
- 72 (ii) if the funds are invested by an institution of higher education as defined in Section
- 73 [53B-3-102](#), a city of the first class, or a county of the first class, 10 years or less; or
- 74 (iii) if the funds are invested by a public agency insurance mutual, as defined in
- 75 Subsection [31A-1-103](#)(7)(a), 20 years or less;
- 76 (h) obligations other than mortgage pools and other mortgage derivative products that:
- 77 (i) are issued by, or fully guaranteed as to principal and interest by, the following
- 78 agencies or instrumentalities of the United States in which a market is made by a primary
- 79 reporting government securities dealer, unless the agency or instrumentality has become private
- 80 and is no longer considered to be a government entity:
- 81 (A) Federal Farm Credit banks;
- 82 (B) Federal Home Loan banks;
- 83 (C) Federal National Mortgage Association;
- 84 (D) Federal Home Loan Mortgage Corporation;
- 85 (E) Federal Agriculture Mortgage Corporation; and
- 86 (F) Tennessee Valley Authority; and
- 87 (ii) unless the funds invested are pledged or otherwise deposited in an irrevocable trust
- 88 escrow account, have a remaining term to final maturity of:
- 89 (A) five years or less;

90 (B) if the funds are invested by an institution of higher education as defined in Section
91 53B-3-102, a city of the first class, or a county of the first class, 10 years or less; or

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

94 (i) fixed rate corporate obligations that:

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

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

98 (iii) are publicly traded; and

99 (iv) have a remaining term to final maturity of 15 months or less or are subject to a
100 hard put at par value or better, within 365 days;

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

106 (i) five years or less;

107 (ii) if the funds are invested by an institution of higher education as defined in Section
108 53B-3-102, a city of the first class, or a county of the first class, 10 years or less; or

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

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

118 (i) five years or less;

119 (ii) if the funds are invested by an institution of higher education as defined in Section
120 53B-3-102, a city of the first class, or a county of the first class, 10 years or less; or

- 121 (iii) if the funds are invested by a public agency insurance mutual, as defined in
122 Subsection [31A-1-103\(7\)\(a\)](#), 20 years or less;
- 123 (l) shares or certificates in a money market mutual fund;
- 124 (m) variable rate negotiable deposits that:
- 125 (i) are issued by a qualified depository or a permitted depository;
- 126 (ii) are repriced at least semiannually; and
- 127 (iii) have a remaining term to final maturity not to exceed three years;
- 128 (n) variable rate securities that:
- 129 (i) (A) are rated "A" or higher or the equivalent of "A" or higher by two nationally
130 recognized statistical rating organizations;
- 131 (B) are senior unsecured or secured obligations of the issuer, excluding covered bonds;
- 132 (C) are publicly traded;
- 133 (D) are repriced at least semiannually; and
- 134 (E) have a remaining term to final maturity not to exceed three years or are subject to a
135 hard put at par value or better, within 365 days;
- 136 (ii) are not mortgages, mortgage-backed securities, mortgage derivative products, or a
137 security making unscheduled periodic principal payments other than optional redemptions;
- 138 [~~and~~]
- 139 (o) reciprocal deposits made in accordance with Subsection [51-7-17\(4\)](#)[~~;~~]; and
- 140 (p) negotiable brokered certificates of deposit made in accordance with Subsection
141 [51-7-17\(4\)](#).
- 142 (4) The following public funds are exempt from the requirements of Subsection (3):
- 143 (a) a local government other post-employment benefits trust fund under Section
144 [51-7-12.2](#); and
- 145 (b) a nonnegotiable deposit made in accordance with Section [53B-7-601](#) in a foreign
146 depository institution as defined in Section [7-1-103](#).
- 147 (5) If any of the deposits authorized by Subsection (3)(a) are negotiable or
148 nonnegotiable large time deposits issued in amounts of \$100,000 or more, the interest shall be
149 calculated on the basis of the actual number of days divided by 360 days.
- 150 (6) A public treasurer may maintain fully insured deposits in demand accounts in a
151 federally insured nonqualified depository only if a qualified depository is not reasonably

152 convenient to the entity's geographic location.

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

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

156 (b) 30 days for new issues.

157 Section 2. Section **51-7-15** is amended to read:

158 **51-7-15. Bonds of state treasurer and other public treasurers -- Reports to**
159 **council.**

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

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

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

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

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

176 (b) The report shall contain:

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

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

182 (c) A public treasurer shall make copies of the report available to the public at the

183 public treasurer's office during normal business hours.

184 Section 3. Section 51-7-17 is amended to read:

185 **51-7-17. Criteria for investments.**

186 (1) As used in this section:

187 (a) "Affiliate" means, in relation to a provider:

188 (i) an entity controlled, directly or indirectly, by the provider;

189 (ii) an entity that controls, directly or indirectly, the provider; or

190 (iii) an entity directly or indirectly under common control with the provider.

191 (b) "Control" means ownership of a majority of the voting power of the entity or
192 provider.

193 (2) (a) A public treasurer shall consider and meet the following objectives when
194 depositing and investing public funds:

195 (i) safety of principal;

196 (ii) protection of principal during periods of financial market volatility;

197 (iii) need for liquidity;

198 (iv) yield on investments;

199 (v) recognition of the different investment objectives of operating and permanent
200 funds; and

201 (vi) maturity of investments, so that the maturity date of the investment does not
202 exceed the anticipated date of the expenditure of funds.

203 (b) A public treasurer shall invest the proceeds of general obligation bond issues, tax
204 anticipation note issues, and funds pledged or otherwise dedicated to the payment of interest
205 and principal of general obligation bonds and tax anticipation notes issued by the state or a
206 political subdivision of the state in accordance with:

207 (i) Section 51-7-11; or

208 (ii) the terms of the borrowing instrument applicable to those issues and funds, if those
209 terms are more restrictive than Section 51-7-11.

210 (c) A public treasurer shall invest the proceeds of bonds other than general obligation
211 bonds and the proceeds of notes other than tax anticipation notes issued by the state or a
212 political subdivision of the state, and all funds pledged or otherwise dedicated to the payment
213 of interest and principal of those notes and bonds:

214 (i) in accordance with the terms of the borrowing instruments applicable to those bonds
215 or notes; or

216 (ii) if none of those provisions are applicable, in accordance with Section 51-7-11.

217 (d) A public treasurer may invest proceeds of bonds, notes, or other money pledged or
218 otherwise dedicated to the payment of debt service on the bonds or notes in investment
219 agreements if:

220 (i) the investment is permitted by the terms of the borrowing instrument applicable to
221 those bonds or notes or the borrowing instrument authorizes the investment as an investment
222 permitted by the State Money Management Act;

223 (ii) either the provider of the investment agreement or an entity fully, unconditionally,
224 and irrevocably guaranteeing the provider's obligations under the investment agreement has
225 received a rating of:

226 (A) at least "AA-" from S&P or "Aa3" from Moody's for investment agreements
227 having a term of more than one year; or

228 (B) at least "A-1+" from S&P or "P-1" from Moody's for investment agreements
229 having a term of one year or less;

230 (iii) the investment agreement contains provisions approved by the public treasurer that
231 provide that, in the event of a rating downgrade of the provider or its affiliate guarantor, as
232 applicable, by either S&P or Moody's below the "A" category or its equivalent, or a rating
233 downgrade of a nonaffiliate guarantor by either S&P or Moody's below the "AA" category or
234 its equivalent, the provider must, within 30 days after receipt of notice of the downgrade:

235 (A) collateralize the investment agreement with direct obligations of, or obligations
236 guaranteed by, the United States of America having a market value at least equal to 105% of
237 the amount of the money invested, valued at least quarterly, and deposit the collateral with a
238 third-party custodian or trustee selected by the public treasurer; or

239 (B) terminate the agreement without penalty and repay all of the principal invested and
240 the interest accrued on the investment to the date of termination; and

241 (iv) the public treasurer receives an enforceability opinion from the legal counsel of the
242 investment agreement provider and, if there is a guarantee, an enforceability opinion from the
243 legal counsel of the guarantor with respect to the guarantee.

244 (3) (a) As used in this Subsection (3), "interest rate contract" means interest rate

245 exchange contracts, interest rate floor contracts, interest rate ceiling contracts, or other similar
246 contracts authorized by resolution of the governing board or issuing authority, as applicable.

247 (b) A public treasurer may, with the approval of the state treasurer:

248 (i) enter into interest rate contracts that the governing board or issuing authority
249 determines are necessary, convenient, or appropriate for the control or management of debt or
250 for the cost of servicing debt; and

251 (ii) use its public funds to satisfy its payment obligations under those contracts.

252 (c) Those contracts:

253 (i) shall comply with the requirements established by council rules; and

254 (ii) may contain payment, security, default, termination, remedy, and other terms and
255 conditions that the governing board or issuing authority considers appropriate.

256 (d) Neither interest rate contracts nor public funds used in connection with these
257 interest rate contracts may be considered a deposit or investment.

258 (4) A public treasurer shall ensure that all public funds invested in deposit instruments
259 are invested with qualified depositories within Utah, except:

260 (a) for deposits made in accordance with Section [53B-7-601](#) in a foreign depository
261 institution as defined in Section [7-1-103](#);

262 (b) reciprocal deposits, subject to rules made by the council under Subsection
263 [51-7-18\(2\)](#); [or]

264 (c) negotiable brokered certificates of deposit, subject to rules made by the council
265 under Subsection [51-7-18\(2\)](#); or

266 [~~e~~] (d) if national market rates on instruments of similar quality and term exceed
267 those offered by qualified depositories, investments in out-of-state deposit instruments may be
268 made only with institutions that meet quality criteria set forth by the rules of the council.