

1 **HIGHER EDUCATION STUDENT ASSISTANCE**

2 **AMENDMENTS**

3 2022 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Evan J. Vickers**

6 House Sponsor: Val L. Peterson

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends and enacts provisions related to the Utah Higher Education Assistance
11 Authority.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ creates the Higher Education Student Success Endowment (endowment) consisting
16 of funds from the proceeds from the divestment of the Utah Higher Education
17 Assistance Authority's (authority) loan portfolio, among other revenue sources;
- 18 ▶ directs the state treasurer to manage the endowment;
- 19 ▶ authorizes the Utah Board of Higher Education (board) to expend money from the
20 endowment to advance higher education system priorities;
- 21 ▶ enacts board duties in relation to the endowment;
- 22 ▶ directs the board to prepare recommendations for discontinuing the authority; and
- 23 ▶ makes conforming changes.

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 This bill provides a special effective date.

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **51-7-2**, as last amended by Laws of Utah 2021, Chapter 33

31 **53B-12-101**, as last amended by Laws of Utah 2016, Chapter 296

32 ENACTS:

33 **53B-7-801**, Utah Code Annotated 1953

34 **53B-7-802**, Utah Code Annotated 1953

35 **53B-7-803**, Utah Code Annotated 1953

36 **53B-12-109**, Utah Code Annotated 1953

37

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

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

40 **51-7-2. Exemptions from chapter.**

41 The following funds are exempt from this chapter:

42 (1) funds invested in accordance with the participating employees' designation or
43 direction pursuant to a public employees' deferred compensation plan established and operated
44 in compliance with Section 457 of the Internal Revenue Code of 1986, as amended;

45 (2) funds of the Utah State Retirement Board;

46 (3) funds of the Utah Housing Corporation;

47 (4) endowment funds of higher education institutions, including funds of the Higher
48 Education Student Success Endowment, created in Section **53B-7-801**;

49 (5) permanent and other land grant trust funds established pursuant to the Utah
50 Enabling Act and the Utah Constitution;

51 (6) the State Post-Retirement Benefits Trust Fund;

52 (7) the funds of the Utah Educational Savings Plan;

53 (8) funds of the permanent state trust fund created by and operated under Utah
54 Constitution, Article XXII, Section 4;

55 (9) the funds in the Navajo Trust Fund;

- 56 (10) the funds in the Radioactive Waste Perpetual Care and Maintenance Account;
- 57 (11) the funds in the Employers' Reinsurance Fund;
- 58 (12) the funds in the Uninsured Employers' Fund;
- 59 (13) the Utah State Developmental Center Long-Term Sustainability Fund, created in
- 60 Section [62A-5-206.7](#); and
- 61 (14) the funds in the Risk Management Fund created in Section [63A-4-201](#).

62 Section 2. Section **53B-7-801** is enacted to read:

63 **Part 8. Higher Education Student Success Endowment**

64 **53B-7-801. Definitions.**

65 As used in this part:

- 66 (1) "Authority" means the Utah Higher Education Assistance Authority.
- 67 (2) "Endowment" means the Higher Education Student Success Endowment created in

68 Section [53B-7-802](#).

69 Section 3. Section **53B-7-802** is enacted to read:

70 **53B-7-802. Higher Education Student Success Endowment.**

- 71 (1) There is created the Higher Education Student Success Endowment.
- 72 (2) The endowment consists of:
 - 73 (a) the proceeds from divestment of the authority's loan portfolio in accordance with

74 Section [53B-12-109](#);

- 75 (b) appropriations made to the endowment by the Legislature, if any;
- 76 (c) income from the investment of the endowment; and
- 77 (d) other revenues received from other sources.
- 78 (3) The board shall account for the receipt and expenditures of endowment money in
- 79 accordance with the policies and guidance of the Division of Finance.
- 80 (4) (a) (i) The state treasurer shall invest the endowment money with the primary goal
- 81 of providing for stability, income, and growth of the principal.
- 82 (ii) The state treasurer may deduct any administrative costs incurred in managing

83 endowment assets from earnings before distributing the earnings.

84 (b) Nothing in this section requires a specific outcome in investing.

85 (c) The state treasurer may employ professional asset managers to assist in the
86 investment of assets of the endowment.

87 (d) The state treasurer may only provide compensation to asset managers from earnings
88 generated by the endowment's investments.

89 (e) The state treasurer shall invest and manage the endowment assets as a prudent
90 investor would, by:

91 (i) considering the purposes, terms, distribution requirements, and other circumstances
92 of the endowment; and

93 (ii) exercising reasonable care, skill, and caution in order to meet the standard of care
94 of a prudent investor.

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

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

99 (ii) evaluate the state treasurer's investment and management decisions respecting
100 individual assets not in isolation, but in context of an endowment portfolio as a whole as a part
101 of an overall investment strategy that has risk and return objectives reasonably suited to the
102 endowment.

103 (5) (a) The endowment shall earn interest.

104 (b) The state treasurer shall deposit the interest or other revenue earned from
105 investment of the endowment into the endowment.

106 (6) The board:

107 (a) may expend money from the endowment for programs that:

108 (i) advance the system priorities as established in Subsection [53B-1-402\(2\)\(a\)](#); and

109 (ii) support prospective students or current students enrolled at an institution, as

110 described in Section 53B-2-101; and

111 (b) may not expend money from the endowment for a capital expenditure, including
112 the construction or lease of a capital facility or operation and maintenance of a capital facility.

113 (7) The board shall ensure that:

114 (a) money deposited into the endowment is irrevocable and is expended only for
115 programs that advance the system priorities as established in Subsection 53B-1-402(2)(a); and

116 (b) creditors of the board of directors may not seize, attach, or otherwise obtain assets
117 of the endowment.

118 Section 4. Section 53B-7-803 is enacted to read:

119 **53B-7-803. Board duties.**

120 (1) The board shall:

121 (a) act as trustee of the endowment and exercise the state's fiduciary responsibilities;

122 (b) meet at least twice a year to conduct business on behalf of the endowment;

123 (c) review and approve all endowment policies, projections, rules, criteria, procedures,
124 forms, standards, and performance goals;

125 (d) review and approve the budget and expenditures for the endowment in accordance
126 with Section 53B-7-802;

127 (e) review financial records for the endowment, including endowment receipts,
128 expenditures, and investments; and

129 (f) take any other action necessary to perform the board's fiduciary obligations.

130 (2) The board shall annually submit a budget and expenditures to the Higher Education
131 Appropriations Subcommittee no later than November 1.

132 Section 5. Section 53B-12-101 is amended to read:

133 **53B-12-101. Utah Higher Education Assistance Authority designated -- Powers.**

134 The board is the Utah Higher Education Assistance Authority and, in this capacity,
135 may, subject to Section 53B-12-109, do the following:

136 (1) guarantee 100% of the principal of and interest on a loan to or for the benefit of a

137 person attending or accepted to attend an eligible postsecondary educational institution to assist
138 that person in meeting any educational expenses incurred in an academic year;

139 (2) take, hold, and administer real or personal property and money, including interest
140 and income, either absolutely or in trust, for any purpose under this chapter;

141 (3) acquire property for the purposes indicated in Subsection (2) by purchase or lease
142 and by the acceptance of gifts, grants, bequests, devises, or loans;

143 (4) enter into or contract with an eligible lending institution, or with a public or private
144 postsecondary educational institution to provide for the administration by the institution of any
145 loan or loan guarantee made by it, including application and repayment provisions;

146 (5) participate in federal programs guaranteeing, reinsuring, or otherwise supporting
147 loans to eligible borrowers for postsecondary educational purposes and agree to, and comply
148 with, the conditions and regulations applicable to those programs;

149 (6) adopt, amend, or repeal rules, in accordance with Title 63G, Chapter 3, Utah
150 Administrative Rulemaking Act, to govern the activities authorized by this chapter;

151 (7) receive state appropriations for the fund established under Section [53B-12-104](#) to
152 match deposits and to accept contributions received by it for this purpose;

153 (8) receive funds from the federal government to assist in implementing federally
154 supported programs administered under this chapter;

155 (9) engage, appoint, or contract for the services of officers, agents, employees, and
156 private consultants to render and perform professional and technical duties and provide
157 assistance and advice in carrying out the purposes of this chapter, to describe their duties, and
158 to fix the amount and source of their compensation; and

159 (10) receive employment information from the Workforce Research and Analysis
160 Division in accordance with Section [35A-4-312](#) for the purpose of collecting defaulted student
161 loans made under this chapter. The information obtained under this Subsection (10) shall be
162 limited to the employer's name, address, and telephone number for borrowers who have
163 defaulted on a student loan held by the Utah Higher Education Assistance Authority.

164 Section 6. Section **53B-12-109** is enacted to read:

165 **53B-12-109. Dissolution of authority -- Higher Education Student Success**
166 **Endowment.**

167 (1) As used in this section:

168 (a) "Authority" means the Utah Higher Education Assistance Authority.

169 (b) "Board" means the board of directors appointed in accordance with Section
170 53B-12-102.

171 (2) The board of directors shall, no later than November 1, 2022, prepare a written
172 analysis and recommendations describing:

173 (a) the most efficient way to discontinue any authority loan servicing and
174 administration;

175 (b) a complete accounting of remaining authority assets, real property, outstanding
176 bonds, and other obligations;

177 (c) recommendations for reorganizing the board of directors for purposes of
178 administering the Utah Educational Savings Plan created in Section 53B-8a-103;

179 (d) actions the authority will take to discontinue participation in federal programs
180 guaranteeing, reinsuring, or otherwise supporting loans for postsecondary educational
181 purposes; and

182 (e) efforts the board of directors is taking and will take toward the dissolution of the
183 authority.

184 (3) The board shall divest the authority's loan portfolio and deposit the proceeds into
185 the Higher Education Student Success Endowment, created in Section 53B-7-802.

186 Section 7. **Effective date.**

187 If approved by two-thirds of all the members elected to each house, this bill takes effect
188 upon approval by the governor, or the day following the constitutional time limit of Utah
189 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
190 the date of veto override.

