

FIDUCIARY DUTY MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Chris H. Wilson

House Sponsor: Susan Pulsipher

LONG TITLE

General Description:

This bill addresses fiduciary duties for funds managed by public entities.

Highlighted Provisions:

This bill:

- ▶ requires a public entity to invest public funds in accordance with the prudent investor rule;
- ▶ addresses a public entity's proxy voting duties;
- ▶ requires a public entity to provide the state treasurer access to proxy voting reports upon request; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

49-11-203, as renumbered and amended by Laws of Utah 2002, Chapter 250

51-7-2, as last amended by Laws of Utah 2022, Chapters 186, 298

51-7-14, as last amended by Laws of Utah 2006, Chapter 277

53B-8a-107, as last amended by Laws of Utah 2011, Chapter 46

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

Section 1. Section **49-11-203** is amended to read:

49-11-203. Powers and duties of board.

(1) The board shall:

(a) appoint an executive director to administer the office;

(b) receive and act upon reports covering the operations of the systems, plans, programs, and funds administered by the office;

(c) ensure that the systems, plans, programs, and funds are administered according to law;

(d) review any final order of a hearing officer and approve or modify the order at the board's discretion in accordance with Section [49-11-613](#);

(e) examine and approve an annual operating budget for the office;

(f) serve as investment trustees of the Utah State Retirement Investment Fund as provided under this title;

(g) maintain, in conjunction with participating employers and members, the systems, plans, and programs on an actuarially sound basis;

(h) report annually to the governor, the Legislature, and each participating employer the contribution rates, premium rates, and any adjustments necessary to maintain the systems, plans, and programs on a financially and actuarially sound basis;

(i) receive and act upon recommendations of the executive director;

(j) recommend to the governor and Legislature, through the executive director, any necessary or desirable changes to this title;

(k) develop broad policy for the long-term operation of the various systems, plans, and programs under broad discretion and power to perform the board's policymaking functions, including the specific authority to interpret and define any provision or term under this title when the board or office provides written documentation which demonstrates that the interpretation or definition promotes uniformity in the administration of the systems or maintains the actuarial soundness of the systems, plans, or programs;

(l) adopt interest rates, premium rates, and annual contribution rates after reviewing

58 actuarial recommendations;

59 (m) establish the compensation of the executive director and adopt compensation plans
60 and policies based on market surveys for positions in the office;

61 (n) take action consistent with this title for the administration of the systems, plans, and
62 programs in order to carry out the purposes of this title;

63 (o) provide for audits of the systems, plans, programs, and funds;

64 (p) take actions not in conflict with the board's trust and fiduciary responsibilities or
65 other law, with respect to the governance of the office which are substantially similar to those
66 governing other public agencies; ~~[and]~~

67 (q) in accordance with the board's fiduciary responsibilities, make investment decisions
68 with the sole purpose of maximizing the risk-adjusted return on the investments;

69 (r) to the extent practicable:

70 (i) (A) retain the right to vote investor proxies; or

71 (B) if the investments are commingled with another investor's funds, request the right
72 to vote investor proxies; and

73 (ii) ensure proxy voting is exercised to maximize risk-adjusted returns for the exclusive
74 benefit of beneficiaries;

75 (s) make proxy voting records available to the state treasurer upon the state treasurer's
76 request; and

77 ~~[(q)]~~ (t) otherwise exercise the powers and perform the duties conferred on the board
78 by this title.

79 (2) The board may:

80 (a) subpoena witnesses and compel ~~[their]~~ the witnesses' attendance to testify before
81 ~~[it]~~ the board, for which purpose each board member may administer oaths and affirmations to
82 witnesses and others transacting business of the office;

83 (b) establish councils to recommend to the board and the executive director policies
84 affecting members of any systems, plans, and programs administered by the board;

85 (c) pay the travel expenses of council members who attend council meetings; and

(d) sue and be sued in ~~[its]~~ the board's own name.

(3) The state treasurer is subject to the same restrictions on disclosure of the proxy voting records described in Subsection (1)(s) as the board.

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

51-7-2. Exemptions from chapter.

(1) ~~[The]~~ Except as provided in Subsection (2), the following funds are exempt from this chapter:

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

~~[(2)]~~ (b) funds of the Utah State Retirement Board;

~~[(3)]~~ (c) funds of the Utah Housing Corporation;

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

~~[(5)]~~ (e) permanent and other land grant trust funds established pursuant to the Utah Enabling Act and the Utah Constitution;

~~[(6)]~~ (f) the State Post-Retirement Benefits Trust Fund;

~~[(7)]~~ (g) the funds of the Utah Educational Savings Plan;

~~[(8)]~~ (h) funds of the permanent state trust fund created by and operated under Utah Constitution, Article XXII, Section 4;

~~[(9)]~~ (i) the funds in the Navajo Trust Fund;

~~[(10)]~~ (j) the funds in the Radioactive Waste Perpetual Care and Maintenance Account;

~~[(11)]~~ (k) the funds in the Employers' Reinsurance Fund;

~~[(12)]~~ (l) the funds in the Uninsured Employers' Fund;

~~[(13)]~~ (m) the Utah State Developmental Center Long-Term Sustainability Fund, created in Section **62A-5-206.7**;

~~[(14)]~~ (n) the funds in the Risk Management Fund created in Section **63A-4-201**; and

~~[(15)]~~ (o) the Utah fund of funds created in Section **63N-6-401**.

114 (2) Except for the funds of the Utah State Retirement Board and the Utah Educational
115 Savings Plan, the funds described in Subsection (1) are not exempt from Subsections
116 51-7-14(2) and (3).

117 Section 3. Section **51-7-14** is amended to read:

118 **51-7-14. Prudent investor rule for management of investments -- Proxy voting --**
119 **Sale of security or investment for less than cost -- State treasurer access.**

120 (1) ~~[Persons]~~ Subject to Subsection (2), a person selecting investments authorized by
121 Sections 51-7-11 and 51-7-13 shall:

122 ~~[(a) exercise that degree of judgment and care, under the circumstances prevailing at~~
123 ~~the time the investment is selected, that persons of prudence, discretion, and intelligence~~
124 ~~exercise in the management of their own affairs;]~~

125 ~~[(b)]~~ (a) select investments not for speculation but for investment; and

126 ~~[(c)]~~ (b) consider:

127 (i) the probable safety of the capital;

128 (ii) the probable benefits to be derived;

129 (iii) the probable duration for which that investment may be made;

130 (iv) the investment objectives specified in Section 51-7-17; and

131 (v) the investment portfolio as a whole.

132 (2) A public treasurer shall:

133 (a) invest public funds in accordance with the prudent investor rule established in Title
134 75, Chapter 7, Part 9, Utah Uniform Prudent Investor Act;

135 (b) make public fund investment decisions with the sole purpose of maximizing the
136 risk-adjusted return on the investments; and

137 (c) to the extent practicable:

138 (i) (A) retain the right to vote investor proxies; or

139 (B) if the investments are commingled with another investor's funds, request the right
140 to vote investor proxies; and

141 (ii) ensure proxy voting is exercised to maximize risk-adjusted returns for the exclusive

benefit of beneficiaries.

~~[(2)]~~ (3) A public treasurer may sell or otherwise dispose of, at less than cost, any security or investment in which public funds under ~~[his]~~ the public treasurer's jurisdiction have been invested if that sale or other disposition tends to maximize the benefits that may be derived from the changed investment.

(4) (a) A public treasurer shall make proxy voting records available to the state treasurer upon the state treasurer's request.

(b) The state treasurer is subject to the same restrictions on disclosure of the proxy voting records as the originating public treasurer.

Section 4. Section **53B-8a-107** is amended to read:

53B-8a-107. Program, administrative, and endowment funds -- Investment and payments from funds -- Proxy voting -- State treasurer access.

(1) ~~[(a)]~~ The plan shall segregate money received by the plan into three funds, the program fund, the administrative fund, and the endowment fund.

~~[(b) The plan, as approved by the board, may hold, deposit, and invest program fund, administrative fund, and endowment fund money in the following:]~~

~~[(i) the Public Treasurer's Investment Fund;]~~

~~[(ii) mutual funds, securities, or other investments registered with the United States Securities and Exchange Commission;]~~

~~[(iii) federally insured depository institutions;]~~

~~[(iv) stable value products, including guaranteed investment contracts, guaranteed interest contracts, and guaranteed insurance contracts, and]~~

~~[(v) any investments that are determined by the board to be appropriate and that would be authorized under:]~~

~~[(A) the provisions of Section ~~51-7-11~~; or]~~

~~[(B) rules of the State Money Management Council applicable to gift funds.]~~

(2) The board shall:

(a) invest the plan in a manner that is consistent with the prudent investor rule for

trustees established in Title 75, Chapter 7, Part 9, Utah Uniform Prudent Investor Act;

(b) in accordance with the board's fiduciary responsibilities, make investment decisions with the sole purpose of maximizing the risk-adjusted return on the investments; and

(c) to the extent practicable:

(i) (A) retain the right to vote investor proxies; or

(B) if the investments are commingled with another investor's funds, request the right to vote investor proxies; and

(ii) ensure proxy voting is exercised to maximize risk-adjusted returns for the exclusive benefit of beneficiaries.

~~[(2)]~~ (3) Transfers may be made from the program fund to the administrative fund to pay operating costs:

(a) associated with administering the plan and as required under Sections 53B-8a-103 through 53B-8a-105; and

(b) as included in the budget approved by the board.

~~[(3)]~~ (4) (a) All money paid by account owners in connection with account agreements shall be deposited as received into separate accounts within the program fund which shall be invested and accounted for separately.

(b) Money accrued by account owners in the program fund may be used for:

(i) payments to any institution of higher education;

(ii) payments to the account owner or beneficiary;

(iii) transfers to another 529 plan; or

(iv) other expenditures or transfers made in accordance with the account agreement.

~~[(4)]~~ (5) (a) All money received by the plan from the proceeds of gifts and other endowments for the purposes of the plan shall be:

(i) deposited, according to the nature of the donation, as received into the endowment fund or the administrative fund; and

(ii) invested and accounted for separately.

(b) Any gifts, grants, or donations made by any governmental unit or any person, firm,

partnership, or corporation to the plan for deposit to the endowment fund or the administrative fund is a grant, gift, or donation to the state for the accomplishment of a valid public eleemosynary, charitable, and educational purpose and is not included in the income of the donor for Utah tax purposes.

(c) The endowment fund or the administrative fund may be used to enhance the savings of low income account owners investing in the plan, for scholarships, or for other college savings incentive programs as approved by the board.

(d) Transfers may be made between the endowment fund and the administrative fund upon approval by the board.

(e) Endowment fund earnings not accruing to a beneficiary under an account agreement, not transferred to the administrative fund, or not otherwise approved by the board for expenditure, shall be reinvested in the endowment fund.

(6) Subsection (2) does not prohibit the board from offering individual account owners a variety of voluntary investment options that have different risk profiles and investment objectives.

(7) (a) The board shall make proxy voting records available to the state treasurer upon the state treasurer's request.

(b) The state treasurer is subject to the same restrictions on disclosure of the proxy voting records as the board.