

**PUBLIC FUNDS AND ACCOUNTS AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Eric K. Hutchings**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the State Money Management Act and Title 53B, State System of Higher Education to allow certain foreign accounts for public funds.

**Highlighted Provisions:**

This bill:

▶ allows deposits of certain institutions of higher education public funds in a foreign depository institution for educational purposes if the:

• laws of the foreign country require the money to be deposited in the foreign country; or

• terms of a grant, gift, or contract require the funds to be deposited in the foreign country; and

▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2013.

**Utah Code Sections Affected:**

AMENDS:

**51-4-1**, as last amended by Laws of Utah 2004, Chapter 115

**51-7-4**, as last amended by Laws of Utah 2011, Chapter 46



- 28           **51-7-11**, as last amended by Laws of Utah 2011, Chapter 276
- 29           **51-7-15**, as last amended by Laws of Utah 1992, Chapter 285
- 30           **51-7-17**, as last amended by Laws of Utah 2000, Chapter 246
- 31           **51-7-18.2**, as last amended by Laws of Utah 1992, Chapter 285

32 ENACTS:

33           **53B-7-601**, Utah Code Annotated 1953



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

36           Section 1. Section **51-4-1** is amended to read:

37           **51-4-1. Deposits by state officers, boards, commissions, institutions, departments,**  
38 **divisions, agencies, and similar instrumentalities.**

39           (1) As used in this section, "agency" means each officer, board, commission,  
40 institution, department, division, agency, and other similar instrumentality of the state of Utah.

41           (2) [~~Unless an agency receives~~] Except as provided under Section 53B-7-601, or  
42 through the receipt of a written variance from the state treasurer, each agency shall deposit  
43 daily, if practicable, but no later than once every three banking days, all collections of state  
44 money and other public funds with:

- 45           (a) the state treasurer; or
- 46           (b) a qualified depository for the credit of the state.

47           (3) The state treasurer may make policies governing the reporting and remitting [~~to~~  
48 ~~him~~] of these funds.

49           Section 2. Section **51-7-4** is amended to read:

50           **51-7-4. Transfer of functions, powers, and duties relating to public funds to state**  
51 **treasurer -- Exceptions -- Deposit of income from investment of state money.**

52           (1) Unless otherwise required by the Utah Constitution or applicable federal law, the  
53 functions, powers, and duties vested by law in each [~~and every~~] state officer, board,  
54 commission, institution, department, division, agency, [~~and~~] or other similar [~~instrumentalities~~]  
55 instrumentality relating to the deposit, investment, or reinvestment of public funds, and the  
56 purchase, sale, or exchange of [~~any~~] investments or securities of, or for [~~any~~], funds or accounts  
57 under the control and management of each of these instrumentalities, are transferred to and  
58 shall be exercised by the state treasurer, except:

59 (a) funds assigned to the Utah State Retirement Board for investment under Section  
60 49-11-302;

61 (b) funds of member institutions of the state system of higher education:

62 (i) acquired by gift, devise, or bequest, or by federal or private contract or grant;

63 (ii) derived from student fees or from income from operations of auxiliary enterprises,  
64 which fees and income are pledged or otherwise dedicated to the payment of interest and  
65 principal of bonds issued by ~~[such institutions]~~ an institution of higher education; ~~[and]~~

66 (iii) subject to rules made by the council, under Section 51-7-18, deposited in a foreign  
67 depository institution as defined in Section 7-1-103; and

68 ~~[(iii) any]~~ (iv) other funds ~~[which]~~ that are not included in the institution's work  
69 program as approved by the State Board of Regents;

70 (c) inmate funds as provided in Section 64-13-23 or in Title 64, Chapter 9b, Work  
71 Programs for Prisoners;

72 (d) trust funds established by judicial order;

73 (e) funds of the Workers' Compensation Fund;

74 (f) funds of the Utah Housing Corporation;

75 (g) endowment funds of higher education institutions; and

76 (h) the funds of the Utah Educational Savings Plan.

77 (2) All public funds held or administered by the state or ~~[any of]~~ its boards,  
78 commissions, institutions, departments, divisions, agencies, or similar instrumentalities and not  
79 transferred to the state treasurer as provided by this section shall be:

80 (a) deposited and invested by the custodian in accordance with this chapter, unless  
81 otherwise required by statute or by applicable federal law; and

82 (b) reported to the state treasurer in a form prescribed by the state treasurer.

83 (3) Unless otherwise provided by the constitution or laws of this state or by contractual  
84 obligation, the income derived from the investment of state money by the state treasurer shall  
85 be deposited in and become part of the General Fund.

86 Section 3. Section **51-7-11** is amended to read:

87 **51-7-11. Authorized deposits or investments of public funds.**

88 (1) (a) Except as provided in ~~[Subsection]~~ Subsections (1)(b) and (1)(c), a public  
89 treasurer ~~[may]~~ shall conduct investment transactions ~~[only]~~ through qualified depositories,

90 certified dealers, or directly with issuers of the investment securities.

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

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

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

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

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

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

102 (i) Government National Mortgage Association mortgage pools;

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

104 (iii) Federal National Mortgage Corporation mortgage pools;

105 (iv) Small Business Administration loan pools;

106 (v) Federal Agriculture Mortgage Corporation pools; or

107 (vi) other investments authorized by this section;

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

110 (i) Government National Mortgage Association mortgage pools;

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

112 (iii) Federal National Mortgage Corporation mortgage pools;

113 (iv) Small Business Administration loan pools; or

114 (v) other investments authorized by this section;

115 (d) commercial paper that is classified as "first tier" by two nationally recognized  
116 statistical rating organizations, one of which [~~must~~] shall be Moody's Investors Service or  
117 Standard and Poor's, which has a remaining term to maturity of:

118 (i) 270 days or less for paper issued under 15 U.S.C. Sec. 77c(a)(3); or

119 (ii) 365 days or less for paper issued under 15 U.S.C. Sec. 77d(2);

120 (e) bankers' acceptances that:

- 121 (i) are eligible for discount at a Federal Reserve bank; and  
122 (ii) have a remaining term to maturity of 270 days or less;  
123 (f) fixed rate negotiable deposits issued by a permitted depository that have a  
124 remaining term to maturity of 365 days or less;  
125 (g) obligations of the United States Treasury, including United States Treasury bills,  
126 United States Treasury notes, and United States Treasury bonds;  
127 (h) obligations other than mortgage pools and other mortgage derivative products  
128 issued by, or fully guaranteed as to principal and interest by, the following agencies or  
129 instrumentalities of the United States in which a market is made by a primary reporting  
130 government securities dealer, unless the agency or instrumentality has become private and is no  
131 longer considered to be a government entity:  
132 (i) Federal Farm Credit banks;  
133 (ii) Federal Home Loan banks;  
134 (iii) Federal National Mortgage Association;  
135 (iv) Federal Home Loan Mortgage Corporation;  
136 (v) Federal Agriculture Mortgage Corporation; and  
137 (vi) Tennessee Valley Authority;  
138 (i) fixed rate corporate obligations that:  
139 (i) are rated "A" or higher or the equivalent of "A" or higher by two nationally  
140 recognized statistical rating organizations, one of which ~~[must]~~ shall be ~~[by]~~ Moody's Investors  
141 Service or Standard and Poor's;  
142 (ii) are senior unsecured obligations of the issuer;  
143 (iii) are publicly traded; and  
144 (iv) have a remaining term to final maturity of 13 months or less or ~~[is]~~ are subject to a  
145 hard put at par value or better, within 365 days;  
146 (j) tax anticipation notes and general obligation bonds of the state or ~~[of any]~~ a county,  
147 incorporated city or town, school district, or other political subdivision of ~~[this]~~ the state,  
148 including bonds offered on a when-issued basis without regard to the limitation in Subsection  
149 (7);  
150 (k) bonds, notes, or other evidence of indebtedness of ~~[any]~~ a county, incorporated city  
151 or town, school district, or other political subdivision of the state that are payable from

152 assessments or from revenues or earnings specifically pledged for payment of the principal and  
153 interest on these obligations, including bonds offered on a when-issued basis without regard to  
154 the limitation in Subsection (7);

155 (l) shares or certificates in a money market mutual fund as defined in Section 51-7-3;

156 (m) variable rate negotiable deposits that:

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

158 (ii) are repriced at least semiannually; and

159 (iii) have a remaining term to final maturity not to exceed two years; and

160 (n) variable rate securities that:

161 (i) (A) are rated "A" or higher or the equivalent of "A" or higher by two nationally

162 recognized statistical rating organizations, one of which ~~[must]~~ shall be ~~[by]~~ Moody's Investors  
163 Service or Standard and Poor's;

164 (B) are senior unsecured obligations of the issuer;

165 (C) are publicly traded;

166 (D) are repriced at least semiannually; and

167 (E) have a remaining term to final maturity not to exceed two years or are subject to a  
168 hard put at par value or better, within 365 days; and

169 (ii) are not mortgages, mortgage-backed securities, mortgage derivative products, or  
170 ~~[any]~~ a security making unscheduled periodic principal payments other than optional  
171 redemptions.

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

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

174 (b) the Uninsured Employers' Fund created in Section 34A-2-704; ~~[and]~~

175 (c) a local government other post-employment benefits trust fund under Section  
176 51-7-12.2[-]; and

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

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

182 (6) A public treasurer may maintain fully insured deposits in demand accounts in a

183 federally insured nonqualified depository only if a qualified depository is not reasonably  
184 convenient to the entity's geographic location.

185 (7) The public treasurer shall ensure that all purchases and sales of securities are settled  
186 within:

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

188 (b) 30 days ~~[on]~~ for new issues.

189 Section 4. Section **51-7-15** is amended to read:

190 **51-7-15. Bonds of state treasurer and other public treasurers -- Reports to**  
191 **council.**

192 (1) (a) The state treasurer, county, city, and town treasurers, the clerk or treasurer of  
193 each school district, and ~~[any]~~ other public treasurers that the council designates by rule shall  
194 be bonded in an amount of not less than that established by the council.

195 (b) The council shall base the minimum bond amount on the amount of public funds  
196 normally in the treasurer's possession or control.

197 (2) (a) When a public treasurer deposits or invests public funds as authorized by this  
198 chapter, ~~[he and his]~~ the public treasurer and the public treasurer's bondsmen are not liable for  
199 any loss of public funds invested or deposited unless the loss is caused by the malfeasance of  
200 the public treasurer or ~~[of any]~~ a member of ~~[his]~~ the public treasurer's staff.

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

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

206 (b) The report shall contain:

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

210 (ii) information detailing the nature and extent of interest rate contracts permitted by  
211 Subsection 51-7-17~~(2)~~(3).

212 (c) ~~[The]~~ A public treasurer shall make copies of the report available to the public at  
213 ~~[his offices]~~ the public treasurer's office during normal business hours.

214 Section 5. Section **51-7-17** is amended to read:

215 **51-7-17. Criteria for investments.**

216 (1) As used in this section:

217 (a) "Affiliate" means, in relation to ~~[any]~~ a provider:

218 (i) ~~[any]~~ an entity controlled, directly or indirectly, by the provider;

219 (ii) ~~[any]~~ an entity that controls, directly or indirectly, the provider; or

220 (iii) ~~[any]~~ an entity directly or indirectly under common control with the provider.

221 (b) "Control" means ownership of a majority of the voting power of the entity or

222 provider.

223 (2) (a) ~~[A]~~ A public ~~[treasurers]~~ treasurer shall consider and meet the following

224 objectives when depositing and investing public funds:

225 (i) safety of principal;

226 (ii) need for liquidity;

227 (iii) yield on investments;

228 (iv) recognition of the different investment objectives of operating and permanent

229 funds; and

230 (v) maturity of investments, so that the maturity date of the investment does not exceed

231 the anticipated date of the expenditure of funds.

232 (b) ~~[Each]~~ A public treasurer shall invest the proceeds of general obligation bond

233 issues, tax anticipation note issues, and ~~[a]~~ funds pledged or otherwise dedicated to the

234 payment of interest and principal of general obligation bonds and tax anticipation notes issued

235 by the state or ~~[any]~~ a political subdivision of the state in accordance with:

236 (i) Section 51-7-11; or ~~[in accordance with]~~

237 (ii) the terms of the borrowing instrument applicable to those issues and funds, if those

238 terms are more restrictive than Section 51-7-11.

239 (c) ~~[Each]~~ A public treasurer shall invest the proceeds of bonds other than general

240 obligation bonds and the proceeds of notes other than tax anticipation notes issued by the state

241 or ~~[any]~~ a political subdivision of the state, and all funds pledged or otherwise dedicated to the

242 payment of interest and principal of those notes and bonds~~;~~:

243 (i) in accordance with the terms of the borrowing instruments applicable to those bonds

244 or notes~~;~~; or



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

246 (d) ~~[Each]~~ A public treasurer may invest proceeds of bonds, notes, or other money  
247 pledged or otherwise dedicated to the payment of debt service on the bonds or notes in  
248 investment agreements if:

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

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

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

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

259 (iii) the investment agreement contains provisions approved by the public treasurer that  
260 provide that, in the event of a rating downgrade of the provider or its affiliate guarantor, as  
261 applicable, by either S&P or Moody's below the "A" category or its equivalent, or a rating  
262 downgrade of a nonaffiliate guarantor by either S&P or Moody's below the "AA" category or  
263 its equivalent, the provider must, within 30 days after receipt of notice of the downgrade~~;~~  
264 ~~either~~]:

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

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

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

274 (3) (a) As used in this Subsection (3), "interest rate contract" means interest rate  
275 exchange contracts, interest rate floor contracts, interest rate ceiling contracts, ~~[and]~~ or other

276 similar contracts authorized by resolution of the governing board or issuing authority, as  
277 applicable.

278 (b) A public treasurer may:

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

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

283 (c) Those contracts:

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

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

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

289 (4) ~~[It is the intent of the Legislature]~~ A public treasurer shall ensure that all public  
290 funds invested in deposit instruments ~~[be]~~ are invested with qualified depositories within Utah,  
291 except ~~[that]~~:

292 (a) for deposits made in accordance with Section 53B-7-601 in a foreign depository  
293 institution as defined in Section 7-1-103; or

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

297 Section 6. Section **51-7-18.2** is amended to read:

298 **51-7-18.2. Public treasurer's reports -- Contents.**

299 (1) The council may:

300 (a) require ~~[any]~~ a public treasurer to prepare and file ~~[with it]~~ a written report in a  
301 form prescribed by the council containing the information required by this section; and

302 (b) specify that the report will contain the information required by this section for any  
303 date.

304 (2) The council shall require the report to include information:

305 (a) specifying the amount of public funds in the public treasurer's possession or  
306 control;

- 307 (b) detailing the nature and extent of the deposit and investment of those funds;
- 308 (c) detailing the rate of return on each deposit or investment; and
- 309 (d) detailing the nature and extent of interest rate contracts authorized by Subsection
- 310 51-7-17~~(2)~~(3).

311 (3) The public treasurer shall file the report with the council within 10 days after ~~he~~  
 312 the day on which the public treasurer receives the council's request.

313 (4) ~~Each~~ A public treasurer shall make copies of ~~any reports~~ a report required by  
 314 this section available for inspection by the public at ~~his~~ the public treasurer's office during  
 315 normal business hours.

316 Section 7. Section **53B-7-601** is enacted to read:

**Part 6. Foreign Bank Accounts for Higher Education Purposes**

**53B-7-601. Foreign Bank Accounts for Higher Education Purposes.**

319 (1) As used in this section, "foreign depository institution" is as defined in Section  
 320 7-1-103.

321 (2) In accordance with Subsection 51-7-4(1)(b)(iii), a higher education institution may  
 322 deposit funds in a foreign depository institution for purposes of conducting academic, research,  
 323 or clinical activities in the foreign country, if the:

324 (a) laws of the foreign country require the money to be deposited in the foreign  
 325 country; or

326 (b) terms of a grant, gift, or contract require the funds to be deposited in the foreign  
 327 country.

328 (3) The foreign depository institution in which funds are deposited under this section  
 329 shall meet the requirements of rules made by the State Money Management Council under  
 330 Section 51-7-18.

331 Section 8. **Effective date.**

332 This bill takes effect on July 1, 2013.