

# State Treasurer's Authority Over State Pension Investments

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## Issue

This report describes the state treasurer's authority to manage and invest the state's pension funds, particularly those of the State Employees Retirement System (SERS) and the Teachers Retirement System (TRS).

The Office of Legislative Research is not authorized to issue legal opinions and this report should not be considered as one.

## Summary

The [Connecticut Constitution](#) establishes the state treasurer's position but generally leaves its powers and responsibilities undefined. Instead, the state legislature has defined the treasurer's authority by enacting laws that, among other things, (1) specify which funds the treasurer oversees and (2) authorize her to make investments with them. The legislature has also limited the treasurer's investment authority: it established an advisory council that reviews the treasurer's investment decisions and authorized the governor to direct her to change investments if the council finds it is in the state's best interest to do so.

State statute gives the treasurer investment authority over the trust funds of TRS and SERS, two of the state's largest pension systems. However, because much of SERS has been developed and implemented through collective bargaining with the State Employees Bargaining Agent Coalition (SEBAC), certain aspects of the treasurer's authority to manage and invest SERS funds are also specified in the state's collective bargaining agreement with SEBAC. Thus, changes to that authority could be litigated if they conflict with the agreement's provisions and were not collectively bargained with SEBAC.

## **Treasurer's Investment Authority**

The state constitution establishes the state treasurer's position and requires the treasurer to "receive all moneys belonging to the state, and disburse the same only as he may be directed by law" (Conn. Const. art IV, § 22). The constitution, however, does not reference the treasurer's custody of the state's pension assets or her authority to invest them. Thus, it appears that the treasurer derives her authority over pension fund investment decisions from state statutes, not the state constitution.

State statute authorizes the treasurer to invest any portion of the state's trust funds that are not required for current disbursements ([CGS § 3-13d](#)). The trust funds that fall under this authority include those for SERS and TRS, and several others such as the Connecticut Municipal Employees' Retirement Fund and the Policemen and Firemen Survivor's Benefit Fund ([CGS § 3-13c](#)).

In addition, other statutes specifically give the treasurer custody of the trust funds for SERS and TRS and authorize her to invest any portion of these funds that is not required for current disbursements (CGS §§ [5-156](#) & [10-183m](#), respectively).

Specific to SERS, the 1989 collective bargaining agreement and arbitration award known as "SEBAC I" also requires all SERS assets to be held in trust by the state treasurer and authorizes her to manage and control them unless the plan for the system provides otherwise (p. 440). By law, whenever a provision of a valid state employee collective bargaining agreement or arbitration award conflicts with a state statute, the agreement's or award's provision prevails if it is appropriate to collective bargaining ([CGS § 5-278\(e\)](#)).

## **Limits on Investment Authority**

### ***Statutory Limits***

The statutory limits on the treasurer's investment authority are largely codified in [CGS § 3-13b](#). This law establishes the Investment Advisory Council (IAC), a 12-member council with 10 members appointed by the governor and legislative leaders, plus the treasurer and the Office of Policy and Management secretary who serve as ex-officio members. Of the 10 appointed members, five must be members of the public with investment experience, three must be members of a teachers' union, and two must be members of a state employees' union.

The law requires the treasurer to recommend to IAC a draft state investment policy that sets standards for investing state trust funds, including, for each fund, investment objectives; asset allocation policies; investment performance guidelines; and risk tolerance. The council must review the draft policy and may recommend changes to it that the treasurer may adopt. The treasurer must then adopt a final policy containing any changes she deems appropriate and a majority of the

council must approve it. If a majority of the council fails to approve the policy, the treasurer may submit an amended one until it is approved. The treasurer must annually review the policy and consult with IAC over any possible revisions to it. The policy, and additional information about it, is available [here](#).

Under the law, all trust fund investments made by the treasurer must be reviewed by IAC. The treasurer must provide the council with all relevant information regarding the investments and any other information that the council requests. She must also provide a report on the trust funds' status at each regularly scheduled IAC meeting. The council must promptly notify the auditors of public accounts and the state comptroller if it knows about any (1) unauthorized, illegal, irregular, or unsafe trust fund handling or expenditures; (2) breakdowns in trust fund safekeeping; or (3) such contemplated actions. At the end of each fiscal year, the council must also examine and determine the value of the state's security investments and report them to the governor, legislature, and trust fund beneficiaries. Additional information about IAC is available [here](#).

The law also allows the governor to direct the treasurer to change any of the treasurer's investments if, in IAC's judgment, it is in the state's best interest to do so.

In addition, [CGS § 3-13d](#) requires (1) the investment policy and the treasurer's investments to conform to certain statutory constraints that limit the percentage of state funds invested in common stock and (2) IAC approval for any private equity or real estate investment by a "lame duck" or acting treasurer. Other statutes also limit investments in companies doing business in specified countries ([CGS §§ 3-13g & 3-13h](#)).

### ***SEBAC I Limits***

SEBAC I requires the treasurer to discharge her SERS-related duties solely in the interest of the system's participants and beneficiaries (p. 440). It also requires her to discharge her duties in the following manner:

1. exclusively to (a) provide benefits to the participants and beneficiaries and (b) defray reasonable expenses of administering the plan;
2. with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a similar capacity and situation would use;
3. by diversifying the SERS trust fund's investments in a way that minimizes the risk of large losses, unless it is clearly not prudent to do so; and
4. according to any governing statutes, documents, and instruments that are consistent with the underlying agreement.

In addition, SEBAC I specifies that it will not be a breach of the agreement if the treasurer, with IAC's approval, does the following:

1. considers investment policies and decisions that will contribute to the system's long-term well-being;
2. restricts investments in accordance with SEBAC I or legislation; or
3. invests the trust fund's assets in a way that provides the greatest benefit to SERS members consistent with the fund's integrity.

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