

**RISK MANAGEMENT FOR INDEPENDENT ENTITIES**

2013 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill modifies the Independent Entities Code by amending requirements for a state independent entity to participate in coverage under the Risk Management Fund.

**Highlighted Provisions:**

This bill:

- ▶ modifies the list of state independent entities included in the definition of "independent entity" in the Independent Entities Code;
- ▶ provides that an independent entity is not eligible for coverage by the Division of Risk Management unless the entity's authorizing statute specifically authorizes coverage;
- ▶ modifies the authorizing statutes of certain independent entities to allow for participation in risk-management coverage;
- ▶ provides that the state risk manager may require participating independent entities to obtain additional insurance and comply with other loss-prevention measures for a commercial activity; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides an effective date.

**Utah Code Sections Affected:**

AMENDS:

**53C-1-201 (Effective 07/01/13)**, as last amended by Laws of Utah 2011, Chapter 353

**53C-1-201 (Effective 05/01/13) (Sup 07/01/13)**, as last amended by Laws of Utah 2012, Chapter 347

**63C-7-210 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347

**63E-1-102**, as last amended by Laws of Utah 2012, Chapters 212 and 369

33           **63E-2-107**, as enacted by Laws of Utah 2001, Chapter 201

34           **63H-4-108 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347

35 ENACTS:

36           **63E-1-304**, Utah Code Annotated 1953

37

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

39           Section 1. Section **53C-1-201 (Effective 07/01/13)** is amended to read:

40           **53C-1-201 (Effective 07/01/13). Creation of administration -- Purpose -- Director.**

41           (1) (a) There is established within state government the School and Institutional Trust  
42 Lands Administration.

43           (b) The administration shall manage all school and institutional trust lands and assets  
44 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation  
45 of Revenue from Trust Lands, and Sections 51-7a-201 and 51-7a-202.

46           (2) The administration is an independent state agency and not a division of any other  
47 department.

48           (3) (a) It is subject to the usual legislative and executive department controls except as  
49 provided in this Subsection (3).

50           (b) (i) The director may make rules as approved by the board that allow the  
51 administration to classify a business proposal submitted to the administration as protected  
52 under Section 63G-2-305, for as long as is necessary to evaluate the proposal.

53           (ii) The administration shall return the proposal to the party who submitted the  
54 proposal, and incur no further duties under Title 63G, Chapter 2, Government Records Access  
55 and Management Act, if the administration determines not to proceed with the proposal.

56           (iii) The administration shall classify the proposal pursuant to law if it decides to  
57 proceed with the proposal.

58           (iv) Section 63G-2-403 does not apply during the review period.

59           (c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah  
60 Administrative Rulemaking Act, except that the administration is not subject to Subsections  
61 63G-3-301(6) and (7) and Section 63G-3-601, and the director, with the board's approval, may  
62 establish a procedure for the expedited approval of rules, based on written findings by the  
63 director showing:

- 64 (i) the changes in business opportunities affecting the assets of the trust;
- 65 (ii) the specific business opportunity arising out of those changes which may be lost  
66 without the rule or changes to the rule;
- 67 (iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without  
68 causing the loss of the specific opportunity;
- 69 (iv) approval by at least five board members; and
- 70 (v) that the director has filed a copy of the rule and a rule analysis, stating the specific  
71 reasons and justifications for its findings, with the Division of Administrative Rules and  
72 notified interested parties as provided in Subsection 63G-3-301(10).
- 73 (d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel  
74 Management Act, except as provided in this Subsection (3)(d).
- 75 (ii) The board may approve, upon recommendation of the director, that exemption for  
76 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable  
77 the administration to efficiently fulfill its responsibilities under the law. The director shall  
78 consult with the executive director of the Department of Human Resource Management prior  
79 to making such a recommendation.
- 80 (iii) The positions of director, deputy director, associate director, assistant director,  
81 legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs  
82 officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).
- 83 (iv) Salaries for exempted positions, except for the director, shall be set by the director,  
84 after consultation with the executive director of the Department of Human Resource  
85 Management, within ranges approved by the board. The board and director shall consider  
86 salaries for similar positions in private enterprise and other public employment when setting  
87 salary ranges.
- 88 (v) The board may create an annual incentive and bonus plan for the director and other  
89 administration employees designated by the board, based upon the attainment of financial  
90 performance goals and other measurable criteria defined and budgeted in advance by the board.
- 91 (e) The administration shall comply with Title 63G, Chapter 6a, Utah Procurement  
92 Code, except where the board approves, upon recommendation of the director, exemption from  
93 the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3,  
94 Utah Administrative Rulemaking Act, for procurement, which enable the administration to

95 efficiently fulfill its responsibilities under the law.

96 (f) (i) Except as provided in Subsection (3)(f)(ii), the administration is not subject to  
97 the fee agency requirements of Section 63J-1-504.

98 (ii) The following fees of the administration are subject to the requirements of Section  
99 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change,  
100 reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral  
101 assignment, electronic payment, and processing.

102 (4) The administration is managed by a director of school and institutional trust lands  
103 appointed by a majority vote of the board of trustees with the consent of the governor.

104 (5) (a) The board of trustees shall provide policies for the management of the  
105 administration and for the management of trust lands and assets.

106 (b) The board shall provide policies for the ownership and control of Native American  
107 remains that are discovered or excavated on school and institutional trust lands in consultation  
108 with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4,  
109 Native American Grave Protection and Repatriation Act. The director may make rules in  
110 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement  
111 policies provided by the board regarding Native American remains.

112 (6) In connection with joint ventures and other transactions involving trust lands and  
113 minerals approved under Sections 53C-1-303 and 53C-2-401, the administration, with board  
114 approval, may become a member of a limited liability company under Title 48, Chapter 3, Utah  
115 Revised Uniform Limited Liability Company Act, and is considered a person under Section  
116 48-3-102.

117 (7) Subject to the requirements of Subsection 63E-1-304(2), the administration may  
118 participate in coverage under the Risk Management Fund created by Section 63A-4-201.

119 Section 2. Section **53C-1-201 (Effective 05/01/13) (Sup 07/01/13)** is amended to read:

120 **53C-1-201 (Effective 05/01/13) (Sup 07/01/13). Creation of administration --**

121 **Purpose -- Director.**

122 (1) (a) There is established within state government the School and Institutional Trust  
123 Lands Administration.

124 (b) The administration shall manage all school and institutional trust lands and assets  
125 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation

126 of Revenue from Trust Lands, and Sections 51-7a-201 and 51-7a-202.

127 (2) The administration is an independent state agency and not a division of any other  
128 department.

129 (3) (a) It is subject to the usual legislative and executive department controls except as  
130 provided in this Subsection (3).

131 (b) (i) The director may make rules as approved by the board that allow the  
132 administration to classify a business proposal submitted to the administration as protected  
133 under Section 63G-2-305, for as long as is necessary to evaluate the proposal.

134 (ii) The administration shall return the proposal to the party who submitted the  
135 proposal, and incur no further duties under Title 63G, Chapter 2, Government Records Access  
136 and Management Act, if the administration determines not to proceed with the proposal.

137 (iii) The administration shall classify the proposal pursuant to law if it decides to  
138 proceed with the proposal.

139 (iv) Section 63G-2-403 does not apply during the review period.

140 (c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah  
141 Administrative Rulemaking Act, except that the administration is not subject to Subsections  
142 63G-3-301(6) and (7) and Section 63G-3-601, and the director, with the board's approval, may  
143 establish a procedure for the expedited approval of rules, based on written findings by the  
144 director showing:

145 (i) the changes in business opportunities affecting the assets of the trust;

146 (ii) the specific business opportunity arising out of those changes which may be lost  
147 without the rule or changes to the rule;

148 (iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without  
149 causing the loss of the specific opportunity;

150 (iv) approval by at least five board members; and

151 (v) that the director has filed a copy of the rule and a rule analysis, stating the specific  
152 reasons and justifications for its findings, with the Division of Administrative Rules and  
153 notified interested parties as provided in Subsection 63G-3-301(10).

154 (d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel  
155 Management Act, except as provided in this Subsection (3)(d).

156 (ii) The board may approve, upon recommendation of the director, that exemption for

157 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable  
158 the administration to efficiently fulfill its responsibilities under the law. The director shall  
159 consult with the executive director of the Department of Human Resource Management prior  
160 to making such a recommendation.

161 (iii) The positions of director, deputy director, associate director, assistant director,  
162 legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs  
163 officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

164 (iv) Salaries for exempted positions, except for the director, shall be set by the director,  
165 after consultation with the executive director of the Department of Human Resource  
166 Management, within ranges approved by the board. The board and director shall consider  
167 salaries for similar positions in private enterprise and other public employment when setting  
168 salary ranges.

169 (v) The board may create an annual incentive and bonus plan for the director and other  
170 administration employees designated by the board, based upon the attainment of financial  
171 performance goals and other measurable criteria defined and budgeted in advance by the board.

172 (e) The administration shall comply with Title 63G, Chapter 6a, Utah Procurement  
173 Code, except where the board approves, upon recommendation of the director, exemption from  
174 the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3,  
175 Utah Administrative Rulemaking Act, for procurement, which enable the administration to  
176 efficiently fulfill its responsibilities under the law.

177 (f) (i) Except as provided in Subsection (3)(f)(ii), the administration is not subject to  
178 the fee agency requirements of Section 63J-1-504.

179 (ii) The following fees of the administration are subject to the requirements of Section  
180 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change,  
181 reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral  
182 assignment, electronic payment, and processing.

183 (4) The administration is managed by a director of school and institutional trust lands  
184 appointed by a majority vote of the board of trustees with the consent of the governor.

185 (5) (a) The board of trustees shall provide policies for the management of the  
186 administration and for the management of trust lands and assets.

187 (b) The board shall provide policies for the ownership and control of Native American

188 remains that are discovered or excavated on school and institutional trust lands in consultation  
189 with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4,  
190 Native American Grave Protection and Repatriation Act. The director may make rules in  
191 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement  
192 policies provided by the board regarding Native American remains.

193 (6) In connection with joint ventures and other transactions involving trust lands and  
194 minerals approved under Sections 53C-1-303 and 53C-2-401, the administration, with board  
195 approval, may become a member of a limited liability company under Title 48, Chapter 2c,  
196 Utah Revised Limited Liability Company Act, and is considered a person under Section  
197 48-2c-102.

198 (7) Subject to the requirements of Subsection 63E-1-304(2), the administration may  
199 participate in coverage under the Risk Management Fund created by Section 63A-4-201.

200 Section 3. Section **63C-7-210 (Effective 05/01/13)** is amended to read:

201 **63C-7-210 (Effective 05/01/13). Relation to certain acts.**

202 (1) The Utah Communications Agency Network is exempt from:

203 (a) Title 63J, Chapter 1, Budgetary Procedures Act;

204 (b) Title 63A, Utah Administrative Services Code, except as provided in Section  
205 63A-4-205.5;

206 (c) Title 63G, Chapter 6a, Utah Procurement Code;

207 (d) Title 63G, Chapter 4, Administrative Procedures Act; and

208 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

209 (2) The board shall adopt budgetary procedures, accounting, procurement, and  
210 personnel policies substantially similar to those from which they have been exempted in  
211 Subsection (1).

212 (3) Subject to the requirements of Subsection 63E-1-304(2), the administration may  
213 participate in coverage under the Risk Management Fund created by Section 63A-4-201.

214 Section 4. Section **63E-1-102** is amended to read:

215 **63E-1-102. Definitions.**

216 As used in this title:

217 (1) "Authorizing statute" means the statute creating an entity as an independent entity.

218 (2) "Committee" means the Retirement and Independent Entities Committee created

219 ~~[in]~~ by Section 63E-1-201.

220 (3) "Independent corporation" means a corporation incorporated in accordance with  
221 Chapter 2, Independent Corporations Act.

222 (4) (a) "Independent entity" means an entity having a public purpose relating to the  
223 state or its citizens that is individually created by the state or is given by the state the right to  
224 exist and conduct its affairs as an:

225 (i) independent state agency; or

226 (ii) independent corporation.

227 (b) "Independent entity" includes the:

228 (i) Utah Dairy Commission created ~~[in Title 4, Chapter 22, Dairy Promotion Act]~~ by  
229 Section 4-22-2;

230 (ii) Heber Valley Historic Railroad Authority created ~~[in Title 63H, Chapter 4, Heber~~  
231 ~~Valley Historic Railroad Authority]~~ by Section 63H-4-102;

232 (iii) Utah State Railroad Museum Authority created ~~[in Title 63H, Chapter 5, Utah~~  
233 ~~State Railroad Museum Authority]~~ by Section 63H-5-102;

234 (iv) Utah Science Center Authority created ~~[in Title 63H, Chapter 3, Utah Science~~  
235 ~~Center Authority]~~ by Section 63H-3-103;

236 (v) Utah Housing Corporation created ~~[in Title 35A, Chapter 8, Part 7, Utah Housing~~  
237 ~~Corporation Act]~~ by Section 35A-8-704;

238 (vi) Utah State Fair Corporation created ~~[in Title 63H, Chapter 6, Utah State Fair~~  
239 ~~Corporation Act]~~ by Section 63H-6-103;

240 (vii) Workers' Compensation Fund created ~~[in Title 31A, Chapter 33, Workers'~~  
241 ~~Compensation Fund]~~ by Section 31A-33-102;

242 (viii) Utah State Retirement Office created ~~[in Title 49, Chapter 11, Utah State~~  
243 ~~Retirement Systems Administration]~~ by Section 49-11-201;

244 (ix) School and Institutional Trust Lands Administration created ~~[in Title 53C, Chapter~~  
245 ~~1, Part 2, School and Institutional Trust Lands Administration]~~ by Section 53C-1-201;

246 (x) Utah Communications Agency Network created ~~[in Title 63C, Chapter 7, Utah~~  
247 ~~Communications Agency Network Act]~~ by Section 63C-7-201;

248 (xi) Utah [Generated Renewable Energy Electricity Network Authority] Energy  
249 Infrastructure Authority created ~~[in Title 63H, Chapter 2, Utah Generated Renewable Energy~~

- 250 ~~Electricity Network Authority Act]~~ by Section 63H-2-201; [and]
- 251 (xii) Utah Capital Investment Corporation created [~~in Title 63M, Chapter 1, Part 12,~~
- 252 ~~Utah Venture Capital Enhancement Act.]~~ by Section 63M-1-1207; and
- 253 (xiii) Military Installation Development Authority created by Section 63H-1-201.
- 254 (c) Notwithstanding this Subsection (4), "independent entity" does not include:
- 255 (i) the Public Service Commission of Utah created [~~in~~] by Section 54-1-1;
- 256 (ii) an institution within the state system of higher education;
- 257 (iii) a city, county, or town;
- 258 (iv) a local school district;
- 259 (v) a local district under Title 17B, Limited Purpose Local Government Entities - Local
- 260 Districts; or
- 261 (vi) a special service district under Title 17D, Chapter 1, Special Service District Act.
- 262 (5) "Independent state agency" means an entity that is created by the state, but is
- 263 independent of the governor's direct supervisory control.
- 264 (6) "Money held in trust" means money maintained for the benefit of:
- 265 (a) one or more private individuals, including public employees;
- 266 (b) one or more public or private entities; or
- 267 (c) the owners of a quasi-public corporation.
- 268 (7) "Public corporation" means an artificial person, public in ownership, individually
- 269 created by the state as a body politic and corporate for the administration of a public purpose
- 270 relating to the state or its citizens.
- 271 (8) "Quasi-public corporation" means an artificial person, private in ownership,
- 272 individually created as a corporation by the state which has accepted from the state the grant of
- 273 a franchise or contract involving the performance of a public purpose relating to the state or its
- 274 citizens.
- 275 Section 5. Section **63E-1-304** is enacted to read:
- 276 **63E-1-304. Limitations on risk management coverage.**
- 277 (1) Except as specifically modified in its authorizing statute, an independent entity is
- 278 not eligible to receive coverage under the Risk Management Fund created by Section
- 279 63A-4-201.
- 280 (2) If an independent entity that receives coverage under the Risk Management Fund is

281 involved in a commercial activity, the state risk manager may require that the entity:

282 (a) procure commercial insurance coverage or provide proof of vendor's insurance

283 coverage for the commercial activity; and

284 (b) comply with loss prevention measures specified by the state risk manager.

285 Section 6. Section **63E-2-107** is amended to read:

286 **63E-2-107. Prohibited participation.**

287 Except as specifically modified in its authorizing statute, each independent corporation  
288 may not participate in the:

289 (1) issuance of bonds that are the obligation of the state; or

290 (2) services provided to state agencies, including:

291 (a) fuel dispensing;

292 (b) motor pool services;

293 (c) surplus property services;

294 [~~(d) risk management coverage;~~]

295 [~~(e)~~] (d) information technology services; or

296 [~~(f)~~] (e) archive services.

297 Section 7. Section **63H-4-108 (Effective 05/01/13)** is amended to read:

298 **63H-4-108 (Effective 05/01/13). Relation to certain acts.**

299 (1) The authority is exempt from:

300 (a) Title 51, Chapter 5, Funds Consolidation Act;

301 (b) Title 63A, Utah Administrative Services Code;

302 (c) Title 63G, Chapter 6a, Utah Procurement Code;

303 (d) Title 63J, Chapter 1, Budgetary Procedures Act; and

304 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

305 (2) The authority is subject to audit by the state auditor pursuant to Title 67, Chapter 3,  
306 Auditor, and by the legislative auditor general pursuant to Section 36-12-15.

307 (3) Subject to the requirements of Subsection 63E-1-304(2), the authority may

308 participate in coverage under the Risk Management Fund created by Section 63A-4-201.

309 Section 8. **Effective date.**

310 (1) Except as provided in Subsection (2), this bill takes effect on May 14, 2013.

311 (2) Section 53C-1-201(Effective 07/01/13) takes effect on July 1, 2013.

