

**SCHOOL AND INSTITUTIONAL TRUST
LANDS AMENDMENTS**

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Thomas V. Hatch

AN ACT RELATING TO SCHOOL AND INSTITUTIONAL TRUST LANDS; REQUIRING THE TRUST LANDS ADMINISTRATION TO NOTIFY OWNERS OF PREEXISTING MINING CLAIMS ON FEDERAL LANDS WHEN THE LANDS ARE ACQUIRED BY THE STATE; MODIFYING THE PROCEDURE BY WHICH A PURCHASER RECEIVES LEGAL TITLE TO TRUST LANDS TO CONFORM TO STANDARD REAL ESTATE PRACTICES; CLARIFYING THE PROCEDURE THAT CLAIMANTS MUST FOLLOW TO MAINTAIN UNPATENTED FEDERAL MINING CLAIMS ON LANDS ACQUIRED BY THE TRUST LANDS ADMINISTRATION; AND MAKING CERTAIN TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

53C-1-201, as last amended by Chapter 219, Laws of Utah 1998

53C-2-104, as last amended by Chapter 202, Laws of Utah 1999

53C-2-407, as last amended by Chapter 103, Laws of Utah 1996

53C-4-102, as last amended by Chapter 103, Laws of Utah 1996

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

Section 1. Section **53C-1-201** is amended to read:

53C-1-201. Creation of administration -- Purpose -- Director.

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

(b) The administration shall manage all school and institutional trust lands and assets within the state, except as otherwise provided in Chapter 3 of this title and Section 51-7-12.

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

(3) (a) It is subject to the usual legislative and executive department controls except as

follows:

(i) (A) the director may make rules as approved by the board that allow the administration to classify a business proposal submitted to the administration as protected under Section 63-2-304, for as long as is necessary to evaluate the ~~[proposals]~~ proposal;

(B) the administration shall return the proposal to the party who submitted the proposal, and incur no further duties under Title 63, Chapter 2, Government Records Access and Management Act, if the administration determines not to proceed with the proposal;

(C) the administration shall classify the proposal pursuant to law if it decides to proceed with the proposal; and

(D) Section 63-2-403 does not apply during the review period;

(ii) the director shall make rules in compliance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, except that the director, with the board's approval, may establish a procedure for the expedited approval of rules, based on written findings by the director showing:

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

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

(C) the reasons the normal procedures under Section 63-46a-4 cannot be met without causing

the loss of the specific opportunity;

(D) approval by at least five board members; and

(E) that the director has filed a copy of the rule and a rule analysis, stating the specific reasons and justifications for its findings, with the Division of Administrative Rules and notified interested parties as provided in Subsection 63-46a-4(7); ~~[and]~~

(iii) the administration shall comply with Title 67, Chapter 19, Utah State Personnel Management Act, except as follows:

(A) the board may approve, upon recommendation of the director, that exemption for specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable the administration to efficiently fulfill its responsibilities under the law. The director shall consult with the director of the Department of Human Resource Management prior to making such a

recommendation. The positions of director, deputy director, assistant director, legal counsel appointed under Subsection 53C-1-305(2), administrative assistant, and public affairs officer are exempt under Subsections 67-19-12(2) and 67-19-15(1);

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

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

(iv) the administration shall comply with Title 63, Chapter 56, Utah Procurement Code, except where the board approves, upon recommendation of the director, an exemption under Section 63-56-3 and simultaneous adoption of policies for procurement, which enable the administration to efficiently fulfill its responsibilities under the law.

(b) (i) The board and director shall review the exceptions under Subsection (3)(a) and make recommendations for any modification, if required, which the Legislature would be asked to consider during its annual General Session.

(ii) The board and director may include in their recommendations any other proposed exceptions from the usual executive and legislative controls the board and director consider necessary to accomplish the purpose of this title.

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

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

(b) The board shall provide policies for the ownership and control of Native American remains that are discovered or excavated on school and institutional trust lands in consultation with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4, Native American Graves Protection and Repatriation Act.

(6) In connection with joint ventures for the development of trust lands and minerals approved by the board under Subsection 53C-1-303(4)[~~(c)~~] (e), the administration may become a member of a limited liability company under Title 48, Chapter 2b, Utah Limited Liability Company Act, and is considered a person under Subsection 48-2b-102(6) for such purposes.

Section 2. Section **53C-2-104** is amended to read:

**53C-2-104. Preexisting federal mining claims on trust lands -- Filing of notice --
Conclusive evidence of abandonment.**

(1) The Legislature recognizes the importance of having an effective state filing system for unpatented federal mining claims located on trust lands prior to the state's acquisition of title that would allow the state to determine the extent of preexisting unpatented mining claims on those lands and eliminate the cloud on the state's title created by abandoned unpatented mining claims, while preserving the rights of owners of valid preexisting unpatented mining claims located on those lands.

(2) (a) When the state acquires title to federal land on which a preexisting mining claim has been located under the general mining laws of the United States, the administration shall send a written notice by certified mail to the owner of the claim.

(b) The administration shall send the notice to the owner's address listed in the mining claim records at the state office of the United States Bureau of Land Management.

(c) The notice shall state that:

(i) the state has acquired legal title to the land on which the mining claim is located; and

(ii) the owner of the mining claim must file an annual notice with the administration as required under this section.

[~~(2)~~] (3) Prior to January 1, 1998, and annually thereafter on or before December 31, each owner of an unpatented lode mining claim, placer mining claim, mill site claim, or tunnel site claim located pursuant to the general mining laws of the United States on lands now owned of record by the state in trust for the common schools or other beneficiary institutions shall file with the administration a notice as prescribed by Subsection [~~(3)~~] (4).

[~~(3)~~] (4) (a) The notice required by Subsection [~~(2)~~] (3) that is filed prior to January 1, 1998, shall include:

(i) a statement of the owner's intention to hold or abandon the claim;
(ii) a brief description of the type and nature of the claim;
(iii) the date the claim was located, and the date the claim was filed of record in county and federal records;

(iv) a copy of the official record of the notice of location or certificate of location of the claim; and

(v) a legal description of the claim, by legal subdivision or metes and bounds description, sufficient to locate the claimed lands on the ground.

(b) A notice required by Subsection [~~(2)~~] (3) that is filed after January 1, 1998, shall include:

(i) the name of the claim; and

(ii) a statement of the owner's intention to hold or abandon the claim.

[~~(4)~~] (5) (a) The administration shall note the existence of all claims for which notices have been filed in the central index of all trust lands required under Section 53C-2-101.

(b) The administration may impose a reasonable filing fee as a condition for accepting the required notices, not to exceed \$50 per claim, to defray the administrative costs of maintaining an index of claims.

[~~(5)~~] (6) (a) Failure to file the notice required by this section constitutes an abandonment of the claim by the owner.

(b) Filing of the required notice by one owner of a claim in which multiple persons own or claim interests fulfills the filing requirements of this section.

[~~(6)~~] (7) Filing of a notice under this section does not make valid a claim which is otherwise invalid under other applicable law.

[~~(7)~~] (8) Acquisition of rights to extract minerals underlying trust lands is governed by Part 4 of this chapter.

[~~(8)~~] (9) This section does not waive any fees, filings, or other requirements imposed by federal law.

Section 3. Section **53C-2-407** is amended to read:

53C-2-407. Mineral lease application procedures.

(1) Lands that are not encumbered by a current mineral lease for the same resource, a withdrawal order, or other rule of the director prohibiting the lease of the lands, may be offered for lease as provided in this section or may, with board approval, be committed to other contractual arrangement under Subsection 53C-2-401(1)(d).

(2) (a) A notice of the land available for leasing shall be posted in the administration's office.

(b) The notice shall:

(i) describe the land;

(ii) indicate what mineral interest in each tract is available for leasing; and

(iii) state the last date, which shall be no less than 15 days after the notice is posted, on which bids may be received.

(3) (a) Applications for the lease of lands filed before the closing date stated in the notice shall be considered to be filed simultaneously.

(b) The applications shall be:

(i) submitted in sealed envelopes; and

(ii) opened in the administration's office at 10:00 a.m. of the first business day following the last day on which bids may be received.

(c) Leases shall be awarded to the highest responsible, qualified bidder, in terms of the bonus paid in addition to the first year's rental, who submitted a bid in the manner required.

(d) (i) In cases of identical bids of successful bidders, the right to lease shall be determined by drawing.

(ii) The drawing shall be held in public at the administration's office.

(4) (a) At the discretion of the director, mineral leases may be offered at an oral public auction.

(b) The director may set a minimum bid for a public auction.

(5) The director may award a mineral lease without following the competitive bidding procedures specified in Subsections (3) and (4) or conducting an oral public auction, if the mineral lessee waives or relinquishes to the trust a prior mining claim, mineral lease, or other right which in the opinion of the director might otherwise:

- (a) defeat or encumber the selection of newly acquired land, either for indemnity or other purposes, or the acquisition by the trust of any land; or
- (b) cloud the title to any of those lands.
- (6) Following the awarding of a lease to a successful bidder, deposits, except filing fees, made by unsuccessful bidders shall be returned to those bidders.

(7) (a) Lands acquired through exchange or indemnity selection from the federal government shall be subject to the vested rights of unpatented mining claimants under the Mining Law of 1872, as amended, and other federal vested rights, both surface and minerals.

(b) Subsection (7)(a) does not:

(i) prevent the director from negotiating the accommodation of vested rights through any method acceptable to the parties; or

(ii) relieve any person claiming vested rights under the Mining Law of 1872, as amended, in lands acquired from the federal government from compliance with Section 53C-2-104.

(8) The director may lease lands in the order in which applications are filed if:

- (a) the director offers trust lands for lease for mineral purposes according to the procedures in Subsections (3) through (6) and the lands are not leased; or
- (b) a period of time of not less than one year but less than three years has elapsed following:
 - (i) a revocation of a withdrawal; or
 - (ii) the date an existing mineral lease is canceled, relinquished, surrendered, or terminated.

Section 4. Section **53C-4-102** is amended to read:

53C-4-102. Sale of trust lands -- Fair market value -- Determination of sale --

Advertising proposed sales -- Sale procedures -- Defaults.

- (1) Trust lands may not be sold for less than the fair market value.
- (2) (a) The director shall determine whether disposal or retention of all or a portion of a property interest in trust lands is in the best interest of the trust.
 - (b) When it is determined that the disposal of an interest in trust lands is in the best interest of the applicable trust, the transaction shall be accomplished in an orderly and timely manner.
- (3) The director shall advertise any proposed sale, lease, or exchange of an interest in trust

lands in a reasonable manner consistent with the director's fiduciary responsibilities.

(4) (a) Any tract of trust land may be subdivided and sold, leased, or exchanged in accordance with a plan or other action designating the land to be subdivided that is approved by the director.

(b) The director may survey the tract and direct its subdivision.

(c) A plat of the survey shall be filed with the county recorder of the county in which the land is located and with the administration.

(5) Sale conditions, including qualification of prospective purchasers, shall be in accordance with accepted mortgage lending and real estate practices.

(6) Upon the sale of land, the director shall issue to the purchaser a certificate of sale which describes the land purchased and states the amount paid, the amount due, and the time when the principal and interest will become due.

~~[(7) Upon payment in full of principal and interest and the surrender of the original certificate of sale for any tract of land sold, or payment in full of any amounts required to be paid for the partial release of property, the governor shall issue a patent to the purchaser, heir, assignee, successor in interest, or other grantee as determined by the director.]~~

(7) (a) Upon request by the director, the governor shall execute and deliver to the director a patent for any tract of land sold in the name of the purchaser, heir, assignee, successor in interest, or other grantee as determined by the director.

(b) The governor may execute patents to lots in platted subdivisions in blank, to be held in escrow pending sale of the lots to final purchasers.

(c) Consistent with the director's fiduciary responsibilities, the director shall utilize accepted real estate and escrow practices in closing sales of trust lands, except the director may not permit the delivery of any patent to the grantee until payment in full of principal and interest, or payment in full of any amounts required to be paid for the partial release of property has been made.

(8) (a) If a purchaser of trust lands defaults in the payment of any installment of principal or interest due under the terms of the contract of sale, the director shall notify the purchaser that if the default is not corrected within 30 days after issuance of the notice the director shall proceed with any

remedy which the administration may pursue under law or the contract of sale.

(b) The notice shall be sent by registered or certified mail to the purchaser at the latest address as shown by the records of the administration.

(c) If the default is not corrected by compliance with the requirements of the notice of default within the time provided by the notice, the director may pursue any available remedy under the contract of sale, including forfeiture.

(d) If forfeited lands are sold again to the same purchaser, the sale may be made by a new and independent contract without regard to the forfeited agreement.