

NAVAJO TRUST FUND AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Keele Johnson

AN ACT RELATING TO STATE AFFAIRS; EXTENDING THE SUNSET DATE FOR THE NAVAJO TRUST FUND; AMENDING DEFINITIONS; ADDRESSING DUTIES OF THE TRUST ADMINISTRATOR; ADDRESSING EXPENDITURES FROM THE FUND; MODIFYING THE REQUIREMENTS OF THE NEEDS ASSESSMENT; AMENDING PROVISIONS RELATED TO THE DINEH COMMITTEE; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

63-55-263, as last amended by Chapters 13, 122 and 270, Laws of Utah 1998

63-88-101, as last amended by Chapter 4, Laws of Utah 1993

63-88-102, as last amended by Chapter 35, Laws of Utah 1997

63-88-105, as last amended by Chapter 35, Laws of Utah 1997

63-88-106, as last amended by Chapter 144, Laws of Utah 1994

63-88-107, as last amended by Chapter 243, Laws of Utah 1996

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

Section 1. Section **63-55-263** is amended to read:

63-55-263. Repeal dates, Titles 63, 63A, and 63C.

(1) (a) Title 63, Chapter 25a, Part 1, Commission on Criminal and Juvenile Justice, is repealed July 1, 2002.

(b) Title 63, Chapter 25a, Part 3, Sentencing Commission, is repealed January 1, 2002.

(2) The Crime Victims' Reparations Board, created in Section 63-25a-404, is repealed July 1, 2007.

(3) The Resource Development Coordinating Committee, created in Section 63-28a-2, is repealed July 1, 2004.

(4) Title 63, Chapter 38c, State Appropriations and Tax Limitation Act, is repealed July

1, 2005.

(5) Title 63, Chapter 75, Families, Agencies, and Communities Together for Children and Youth At Risk Act, is repealed July 1, 2001.

(6) Title 63, Chapter 88, Navajo Trust Fund, is repealed July 1, ~~2000~~ 2005.

(7) Sections 63A-4-204 and 63A-4-205, authorizing the Risk Management Fund to provide coverage to nonstate entities, are repealed July 1, 2001.

(8) Title 63A, Chapter 7, Utah Sports Authority Act, is repealed July 1, 2003.

(9) Title 63A, Chapter 10, State Olympic Coordination Act, is repealed July 1, 2003.

(10) The Utah Health Policy Commission, created in Title 63C, Chapter 3, is repealed July 1, 2001.

~~[(11) The Utah Pioneer Sesquicentennial Celebration Coordinating Council created in Section 63C-5-102 is repealed June 30, 1998.]~~

Section 2. Section **63-88-101** is amended to read:

63-88-101. Definitions.

As used in this chapter:

(1) "Administrative expenditures" means:

(a) expenditures for professional services;

(b) expense reimbursement for the Dineh Committee; and

(c) expense reimbursement, salaries, and benefits for the trust administrator and ~~his~~ the trust administrator's staff.

(2) "Assessment" means ~~either~~ taking one of the following actions to assess the health, education, and general welfare needs of Navajos:

(a) a survey of ~~San Juan County~~ Navajos that includes:

(i) a random sample large enough to secure an accurate representation of their needs; and

(ii) a response rate large enough to provide an accurate representation of those needs; ~~or~~

(b) at least three public hearings held to survey and solicit Navajo needs that are advertised for two weeks before the hearing by:

(i) announcements by the ~~chapters~~;

- (A) Utah Navajo Chapters, if allowed by the chapter; and
- (B) Blue Mountain Dine';
- (ii) notice posted in the chapter buildings and other public locations, if allowed by the chapter;
- (iii) notice of the meeting announced on the radio or television; and
- (iv) notice of the meeting published at least once per week for two consecutive weeks in any newspapers of general circulation within the Navajo community[?]; or
- (c) a physical inventory:
 - (i) conducted by the Office of Trust Administrator;
 - (ii) coordinated with:
 - (A) each Utah Navajo Chapter;
 - (B) the Blue Mountain Dine'; and
 - (C) other sources; and
 - (iii) conducted to determine needs including:
 - (A) the number and capacity of public facilities;
 - (B) the extent of graveled and paved:
 - (I) roads; or
 - (II) air strips;
 - (C) the inventory of water resources;
 - (D) the extent of residential electrical power distribution; and
 - (E) the number and condition of housing units.
- ~~[(8) "Prioritized list of needs"]~~ (3) "Assessment analysis results" means the [list created by] analysis:
 - (a) of the results of the assessment required by Section 63-88-105; and
 - (b) that is developed by the Dineh Committee and the trust administrator [that is required by] in accordance with Section ~~[63-88-104]~~ 63-88-105.
- (4) "Blue Mountain Dine" means the off-reservation Navajo community organization known as the Blue Mountain Dine'.

(5) "Board of trustees" or "board" means the board of trustees created in Section 63-88-103.

~~[(3)]~~ (6) "Business enterprise" means a sole proprietorship, partnership, corporation, or other private entity organized to provide goods or services for a profit.

(7) "Capital" means an investment by the owner of a business enterprise:

(a) in:

(i) cash;

(ii) equipment;

(iii) land; or

(iv) other assets similar to that described in Subsections (7)(a)(i) through (iii); and

(b) that is pledged to be used in the operation of the business enterprise.

~~[(4)]~~ (8) "Dineh Committee" means the Dineh Committee created in Section 63-88-107.

~~[(5)]~~ (9) "Income" means all revenues from investments made by the state treasurer of the trust fund principal.

~~[(7)]~~ (10) "Navajos" means San Juan County, Utah Navajos.

(11) "Office of Trust Administrator" means the office created in Section 63-88-104.

~~[(6)]~~ (12) "Principal" means:

(a) the balance of the trust fund as of February 26, 1992[-]; and

(b) all revenue to the trust fund from whatever source except income as defined in Subsection ~~[(5)]~~ (9).

~~[(9)]~~ (13) "Service provider" means any ~~[business enterprise, private nonprofit organization, or government entity]~~ of the following that provides goods or services to Navajos[-]:

(a) a business enterprise;

(b) a private nonprofit organization; or

(c) a government entity.

~~[(10)]~~ (14) "Trust administrator" means the professional trust administrator appointed as provided in this ~~[part]~~ chapter.

~~[(11)]~~ (15) "Trust fund" or "fund" means the Navajo Trust Fund created by Section 63-88-102.

(16) "Utah Navajo Chapter" means the following chapters of the Navajo Nation:

- (a) Aneth Chapter;
- (b) Mexican Water Chapter;
- (c) Navajo Mountain Chapter;
- (d) Oljato Chapter;
- (e) Dennehotso Chapter;
- (f) Red Mesa Chapter; and
- (g) Teec Nos Pos Chapter.

Section 3. Section **63-88-102** is amended to read:

63-88-102. Trust Fund -- Creation -- Oversight.

- (1) There is created an expendable trust fund entitled the "Navajo Trust Fund."
- (2) The fund consists of:
 - (a) revenues received by the state that represent the 37-1/2% of the net oil royalties from the Aneth Extension of the Navajo Indian Reservation required by P.L. 72-403, 47 Stat. 1418, to be paid to the state;
 - (b) monies received by the trust administrator or Dineh Committee from any contracts executed by:
 - (i) the trust administrator;
 - (ii) the board; or
 - (iii) the Dineh Committee;
 - (c) appropriations made to the fund by the Legislature, if any;
 - (d) income as defined in Subsection 63-88-101[~~(5)~~](9); and
 - (e) other revenues received from other sources.
- (3) The Division of Finance shall account for the receipt and expenditures of fund monies.
- (4) (a) The state treasurer shall invest fund monies by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act.
 - (b) (i) The fund shall earn interest.
 - (ii) The state treasurer shall deposit all interest or other revenue earned from investment of

the fund back into the fund.

(5) The state auditor shall:

(a) conduct an annual audit of the fund's finances, internal controls, and compliance with statutes, rules, policies, and regulations according to the procedures and requirements of Title 67, Chapter 3, Auditor; and

(b) deliver a copy of that audit report to the:

(i) board;

(ii) trust administrator;

(iii) Dineh Committee;

(iv) Office of Legislative Research and General Counsel for presentation to the Native American Legislative Liaison Committee, created in Section 36-22-1;

(v) governor's office;

(vi) Division of Indian Affairs;

(vii) U.S. Bureau of Indian Affairs;

(viii) Navajo Nation; and

(ix) U.S. Secretary of the Interior.

Section 4. Section **63-88-105** is amended to read:

63-88-105. Trust administrator -- Duties.

(1) Under the direction of the board, the trust administrator shall:

(a) review the documents and decisions highlighting the history of the trust fund, including:

(i) the Nelson report, prepared as part of the Bigman v. Utah Navajo Development Council Inc. C77-0031;

(ii) the November 1991 performance audit of the Utah Navajo Trust Fund by the legislative auditor general;

(iii) *Sakezzie v. Utah Indian Affairs Commission*, 198 F. Supp. 218 (1961);

(iv) *Sakezzie v. Utah Indian Affairs Commission*, 215 F. Supp. 12 (1963); and

(v) the September 8, 1977, consent decree, the stipulation dated November 29, 1984, modifying the consent decree, and the court's memorandum opinion dated September 25, 1978, in

Bigman v. Utah Navajo Development Council, Inc., C77-0031;

(b) review all potential sources of trust fund revenues ~~[and]~~;

~~(c)~~ prepare annual projections of monies that will be available for Navajo programs;

~~(c)~~ ~~(d)~~ identify all property owned by the trust ~~[and]~~ fund;

~~(e)~~ establish and maintain a record system to retain records relating to the ~~[trust's]~~ trust fund's property;

~~(d)~~ ~~(f)~~ review all existing and proposed programs financed by the trust fund ~~[and]~~;

~~(g)~~ evaluate whether or not ~~[they]~~ the programs described in Subsection (1)(f) are the most practical and cost-efficient means to provide the desired benefit to ~~[Utah]~~ Navajos;

~~(e)~~ ~~(h)~~ consult regularly with the administrators of all programs financed by the trust fund to obtain ~~[at least quarterly]~~ progress reports on all programs;

~~(f)~~ ~~(i)~~ attend all meetings of:

~~(i)~~ the Dineh Committee; and

~~(ii)~~ the board of trustees;

~~(g)~~ ~~(j)~~ establish written policies identifying expenses payable from the fund for Dineh Committee members;

~~(h)~~ ~~(k)~~ certify that all expenditures from the trust fund:

~~(i)~~ comply with the state's fiduciary responsibilities as trustee of the fund; and

~~(ii)~~ are consistent with this section;

~~(i)~~ ~~(l)~~ make an annual report:

~~(i)~~ to the:

~~(A)~~ board~~[-]~~;

~~(B)~~ the governor~~[-]~~; and

~~(C)~~ the Native American Legislative Liaison Committee, created in Section 36-22-1~~[-]~~; and

~~(ii)~~ that:

~~(i)~~ ~~(A)~~ identifies the source and amount of all revenue received by the fund;

~~(ii)~~ ~~(B)~~ identifies the recipient, purpose, and amount of all expenditures from the fund;

~~(iii)~~ ~~(C)~~ identifies specifically each of the fund's investments and the actual return and the

rate of return from each investment; and

~~[(iv)]~~ (D) recommends any necessary statutory changes to:

(I) improve administration of the fund; or ~~[(t)]~~

(II) protect the state from liability as trustee;

~~[(j)]~~ (m) establish, in conjunction with the state treasurer, the state auditor, and the Division of Finance, appropriate accounting practices for all trust fund receipts, expenditures, and investments according to generally accepted accounting principles;

~~[(k)]~~ (n) provide summary records of trust fund receipts, expenditures, and investments to the board and to the Dineh Committee at each of their meetings;

~~[(t)]~~ (o) pay administrative expenses from the fund;

~~[(m)]~~ (p) report monthly to the board about:

(i) the trust administrator's activities; and

(ii) the status of the trust fund; and

~~[(n)]~~ (q) call additional meetings of the Dineh Committee when necessary.

(2) In conjunction with the Dineh Committee and under the direction of the board, the trust administrator shall:

(a) ~~[before the beginning of each fiscal year,]~~ subject to Subsection (4), conduct ~~[an annual]~~ an assessment at least every two years of the needs of Navajos ~~[in the areas of health, education, and general welfare];~~

(b) before the beginning of each fiscal year, based ~~[upon]~~ on the ~~[annual]~~ assessment required by Subsection (2)(a), develop~~[-, before the beginning of each fiscal year,]~~ assessment analysis results that allow the establishment of a [prioritized] list of the needs of Navajos for that year to be used for the annual budget;

(c) before the beginning of each fiscal year, develop and approve an annual budget for the trust fund;

(d) develop an ethics and conflict of interest policy ~~[for the trust administrator, the administrator's employees, and the Dineh Committee]~~ that emphasizes the need to avoid even the appearance of conflict of interest or impropriety~~[:]~~ that is to apply to:

- (i) the trust administrator;
- (ii) the trust administrator's employees; and
- (iii) the Dineh Committee;

(e) require the trust administrator, each of the trust administrator's employees, and each Dineh Committee member to sign and keep on file written documentation that acknowledges:

- (i) their receipt of the ethics and conflict of interest policy described in Subsection (2)(d); and
- (ii) their willingness to abide by [its] the provisions of the ethics and conflict of interest policy described in Subsection (2)(d); and

(f) make expenditures from the fund "for the health, education, and general welfare of the Navajo Indians, residing in San Juan County" as required by:

- (i) P.L. 72-403, 47 Stat. 1418 (1933);
- (ii) P.L. 90-306, 82 Stat. 121 (1968); and
- (iii) this chapter.

(3) The trust administrator, under direction of the board, may:

- (a) contract with public and private entities; and
- (b) unless prohibited by law or the requirements of this chapter, acquire and hold monies and other property received in the administration of the trust fund.

(4) (a) Notwithstanding Subsection 63-88-101(2), the trust administrator shall ensure that at least every six years the assessment includes:

- (i) a survey as described in Subsection 63-88-101(2)(a); or
- (ii) public hearings as described in Subsection 63-88-101(2)(b).

(b) Subsection (2)(a) does not prohibit the trust administrator from conducting a physical inventory as defined in Subsection 63-88-101(2)(c) during the same year a survey or public hearing is required.

Section 5. Section **63-88-106** is amended to read:

63-88-106. Expenditures from the trust fund.

(1) (a) [~~The~~] Under the direction of the board of trustees, the trust administrator~~[, under the direction of the board,]~~ may make expenditures to invest in business enterprises;

- (i) as authorized and limited by this section~~[-]; and~~
- (ii) giving consideration to the advice of the Dineh Committee.

(b) When making expenditures to invest in a business ~~[enterprises]~~ enterprise the trust administrator:

- (i) may expend trust monies only on a business ~~[enterprises]~~ enterprise located in San Juan County;
 - (ii) may expend trust fund monies only:
 - (A) to invest in a joint business ~~[enterprises]~~ enterprise; and ~~[only]~~
 - (B) when the other party's ~~[cash]~~ capital investment is larger than the trust fund's expenditure;
- and
- (iii) may not continue to make expenditures to or in support of ~~[the]~~ a business enterprise if the business enterprise fails to show a profit within three years.

(2) (a) Before making any expenditures to a business enterprise or service provider from the trust fund, the trust administrator shall:

- (i) comply with ~~[the provisions of]~~ Title 63, Chapter 56, Utah Procurement Code; and
- (ii) review and approve the business enterprise's or service provider's entire budget.

(b) The trust administrator may require that a business enterprise or service provider modify its budget or meet other conditions precedent established by the trust administrator before the business enterprise or service provider may receive expenditures from the trust fund.

(3) The trust administrator shall make all expenditures from the trust fund that are not administrative expenditures by:

- (a) preparing a written document that:
 - (i) defines specifically how the expenditure from the trust fund may be used ~~[and]~~;
 - (ii) establishes any conditions precedent to its use; and

~~[(it)]~~ (iii) requires the recipient of trust fund monies to provide the trust administrator with ~~[regular financial]~~ progress reports detailing how ~~[the monies received from the trust fund]~~ program funds have been expended; and

- (b) obtaining the signature of the recipient on that document before releasing any monies

from the trust fund.

(4) The trust administrator shall:

(a) ~~[by following the procedures and requirements of Title 63, Chapter 46a, Administrative Rulemaking Act,]~~ make rules in accordance with Subsection (6) that:

(i) establish policies and criteria for expenditure of the trust fund monies that take into account the ~~[prioritized list of needs]~~ assessment analysis results; and

(ii) establish performance ~~[policies and]~~ evaluation criteria with which to evaluate the success of expenditures from the trust fund after they are made;

(b) develop procedures, forms, and standards for persons seeking distribution of trust fund monies that implement the policies and criteria for expenditures established by rule;

(c) evaluate all requests for expenditures of trust fund monies against:

(i) the policies and criteria established by rule; and ~~[against]~~

(ii) the requestor's success in meeting performance evaluation criteria and goals in any prior receipt of trust fund monies;

(d) develop performance goals for each trust fund expenditure that implement the performance evaluation criteria established in rule; and

(e) monitor and evaluate each trust fund expenditure based upon ~~[those]~~ the performance goals and performance evaluation criteria created under this Subsection (4).

(5) The trust administrator may expend trust monies for per diem and expenses incurred by the Dineh Committee in performance of their official duties.

(6) The trust administrator shall make a rule described in Subsection (4)(a):

(a) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(b) with the input and recommendation of the Dineh Committee; and

(c) with the approval of the board of trustees.

Section 6. Section **63-88-107** is amended to read:

63-88-107. Utah Dineh Committee.

(1) There is created the Dineh Committee.

(2) (a) The governor with the advice and consent of the Senate shall in accordance with this

section appoint nine members to the committee.

(b) ~~[The]~~ In making an appointment under Subsection (2)(a), the governor shall ensure that:

(i) each member of the committee is an individual:

(A) who is an enrolled member of the Navajo Nation; and

(B) whose name and tribal number are contained in the trust fund's population database; and

(ii) the committee includes:

~~[(i)]~~ (A) two ~~[enrolled]~~ registered members of the Aneth Chapter of the Navajo ~~[tribe]~~ Nation who reside in San Juan County, Utah;

~~[(ii)]~~ (B) one ~~[enrolled]~~ registered member of the Blue Mountain Dine' ~~[-an off-reservation chapter,]~~ who resides in San Juan County, Utah;

~~[(iii)]~~ (C) one ~~[enrolled]~~ registered member of the Mexican Water Chapter of the Navajo ~~[tribe]~~ Nation who resides in San Juan County, Utah;

~~[(iv)]~~ (D) one ~~[enrolled]~~ registered member of the Navajo Mountain Chapter of the Navajo ~~[tribe]~~ Nation who resides in San Juan County, Utah;

~~[(v)]~~ (E) subject to Subsection (11), two ~~[enrolled]~~ members ~~[of]~~ who reside in San Juan County, Utah:

(I) one of which shall be a registered member of the Oljato Chapter of the Navajo Nation; and

(II) one of which shall be a registered member of either the Oljato Chapter or the Dennehotso Chapter of the Navajo ~~[tribe who reside in Utah]~~ Nation;

~~[(vi)]~~ (F) one ~~[enrolled]~~ registered member of the Red Mesa Chapter of the Navajo ~~[tribe]~~ Nation who resides in San Juan County, Utah; and

~~[(vii)]~~ (G) one ~~[enrolled]~~ registered member of the Teec Nos Pos Chapter of the Navajo ~~[tribe]~~ Nation who resides in San Juan County, Utah.

(3) (a) (i) Each of the Utah Navajo Chapters ~~[identified in this subsection]~~, except the Aneth ~~[and]~~, Oljato, and Dennehotso chapters, shall submit to the governor the names of three nominees to the Dineh Committee chosen by the chapter.

(ii) The governor shall select one of ~~[those]~~ the three persons submitted under Subsection

(3)(a)(i) as that chapter's representative on the Dineh Committee.

(b) (i) The Blue Mountain Dine' shall submit to the governor the names of three nominees to the Dineh Committee.

(ii) The governor shall select one of the three persons submitted under Subsection (3)(b)(i) as the Blue Mountain Dine' representative on the Dineh Committee.

~~[(b)]~~ (c) (i) The Aneth [and Oljato Navajo chapters] Chapter shall [each] submit to the governor the names of six nominees to the Dineh Committee chosen by the chapter.

(ii) The governor shall select two of the six persons submitted [by each chapter] under Subsection (3)(c)(i) to be [that chapter's] the Aneth Chapter's representatives on the Dineh Committee.

(d) (i) The Oljato Chapter shall submit to the governor the names of six nominees to the Dineh Committee chosen by the chapter.

(ii) One of the six names submitted under Subsection (3)(d)(i) may be a registered member of the Dennehotso Chapter.

(iii) The governor shall select two of the six persons submitted under Subsection (3)(d)(i) to be the representatives on the Dineh Committee of the Oljato and Dennehotso chapters.

(4) The governor may not appoint any person who is currently, or who, within the last 12 months, has been an officer, director, employee, or contractor of any business enterprise or service provider that solicits, accepts, or receives monies from:

(a) the Division of Indian Affairs; or [from]

(b) the trust fund established in this chapter.

(5) Other than the amount authorized by this section for Dineh Committee member expenses, a person appointed to the Dineh Committee may not solicit, accept, or receive any monies from:

(a) the Division of Indian Affairs;

(b) the trust fund; or

(c) as an officer, director, employee, or contractor of any business enterprise or service provider that solicits, accepts, or receives expenditures from:

(i) the Division of Indian Affairs; or

(ii) the trust fund.

(6) (a) (i) Except as required by Subsection (6)(a)(ii), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(ii) Notwithstanding the requirements of Subsection (6)(a)(i), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(b) Except as provided in Subsection (6)(c), committee members shall serve until their successors are appointed and qualified.

(c) (i) If a committee member is absent from three consecutive committee meetings, or if the committee member has violated the ethical or conflict of interest policies established by statute or by the committee, that member's appointment is terminated, the position is vacant, and the governor shall appoint a replacement.

(ii) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term according to the procedures of this section.

(7) (a) The committee shall select a [~~chairperson~~] chair and a vice chair from its membership each two years subsequent to the appointment of new members.

(b) Five members of the committee are a quorum for the transaction of business.

(c) The committee shall:

(i) comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings;

(ii) ensure that all of its meetings are held [~~on the Utah portion of the Navajo nation~~] at or near:

(A) a chapter house or meeting hall of a Utah Navajo Chapter; or

(B) other places in Utah that the committee considers practical and appropriate; and

(iii) ensure that all of its meetings are public hearings at which any resident of San Juan County may appear and speak.

(8) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates

established by the Division of Finance under Sections 63A-3-106 and 63A-3-107 from the trust fund.

(b) Members may decline to receive per diem and expenses for their service.

(9) The Office of Trust Administrator is staff to the committee.

(10) The committee shall advise the trust administrator about the expenditure of trust fund monies.

(11) If both members appointed under Subsection (2)(b)(ii)(E) are registered members of the Oljato Chapter, the two members shall attend Dennehotso Chapter meetings as practicable.