

**SCHOOL TRUST LANDS MODIFICATIONS**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: Melvin R. Brown**

AN ACT RELATING TO SCHOOL AND INSTITUTIONAL TRUST LANDS; PROVIDING THAT NO MORE THAN 80% OF THE PERMANENT LAND GRANT TRUST FUND ASSETS MAY BE INVESTED IN COMMON OR PREFERRED STOCKS; MODIFYING THE SELECTION PROCESS FOR THE SCHOOL AND INSTITUTIONAL TRUST LANDS BOARD OF TRUSTEES NOMINATING COMMITTEE; REMOVING ARCHAIC LANGUAGE REGARDING PERFORMANCE AUDITS; MODIFYING PROVISIONS RELATED TO LEGAL REPRESENTATION FOR THE ADMINISTRATION; AND PROVIDING THAT THE DIRECTOR OF THE ADMINISTRATION SHALL EFFICIENTLY MANAGE ALL RANGE RESOURCES ON TRUST LANDS CONSISTENT WITH THE DIRECTOR'S FIDUCIARY DUTIES TO THE BENEFICIARIES.

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

AMENDS:

**51-7-12**, as last amended by Chapter 270, Laws of Utah 1999

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

**53C-1-203**, as last amended by Chapter 243, Laws of Utah 1996

**53C-1-204**, as last amended by Chapter 103, Laws of Utah 1996

**53C-1-305**, as enacted by Chapter 294, Laws of Utah 1994

**53C-5-101**, as enacted by Chapter 294, Laws of Utah 1994

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

Section 1. Section **51-7-12** is amended to read:

**51-7-12. Deposit or investment of permanent land grant trust funds -- Authorized deposits and investments -- Asset manager -- Investment Advisory Committee.**

(1) The principal of the permanent land grant trust funds established pursuant to the Utah Enabling Act and the Utah Constitution shall be deposited or invested only in the following:

(a) any deposit or investment authorized by Section 51-7-11;

(b) equity securities, including common and preferred stock issued by corporations listed on a major securities exchange, in accordance with the following criteria applied at the time of investment:

- (i) the treasurer may not invest more than 5%, determined on a cost basis, of the total fund assets in the securities of any one issuer;
- (ii) the treasurer may not invest more than 25%, determined on a cost basis, of total fund assets in a particular industry;
- (iii) the treasurer may not invest more than 5%, determined on a cost basis, of the total fund assets in securities of corporations that have been in continuous operation for less than three years;
- (iv) the fund may not hold in excess of 5% of the outstanding voting securities of any one corporation; and
- (v) at least 75% of the corporations in which investments are made under Subsection (1)(b) must appear on the Standard and Poor's 500 Composite Stock Price Index;

(c) fixed-income securities, including bonds, notes, mortgage securities, zero coupon securities and convertible securities issued by domestic corporations rated A or higher by Moody's Investor's Service, Inc. or by Standard and Poor's Corporation in accordance with the following criteria applied at the time of investment:

- (i) the treasurer may not invest more than 5%, determined on a cost basis, of the total fund assets in the securities of any one issuer;
- (ii) the treasurer may not invest more than 25%, determined on a cost basis, of the total fund assets in a particular industry;
- (iii) the treasurer may not invest more than 5%, determined on a cost basis, of the total fund assets in securities of corporations that have been in continuous operation for less than three years; and
- (iv) the dollar-weighted average maturity of fixed-income securities acquired under Subsection (1)(c) may not exceed ten years;
- (d) fixed-income securities issued by agencies of the United States and government-sponsored organizations, including mortgage-backed pass-through certificates and

mortgage-backed bonds;

(e) shares of an open-end diversified management investment company established under the Investment Companies Act of 1940; and

(f) shares of or deposits in a pooled-investment program.

(2) (a) No more than [~~65%~~] 80% of the total fund assets of any of these funds, on a cost basis, may be invested in common or preferred stocks at any one time.

(b) At least [~~35%~~] 20% of the total assets of these funds shall be invested in fixed-income securities authorized by Subsections (1)(a), (c), and (d).

(3) The state treasurer shall use appropriate investment strategies to protect the principal of the funds administered under this section during periods of financial market volatility.

(4) (a) The state treasurer may employ professional asset managers to assist in the investment of assets of the permanent trust funds.

(b) The treasurer may provide compensation to asset managers from earnings generated by the funds' investments.

(5) This section applies only to permanent trust funds in which the principal is prudently invested and held by the state in perpetuity.

(6) (a) There is established an advisory committee to give suggestions, advice, and opinions to the state treasurer in regard to this section.

(b) The committee shall consist of the following:

(i) one member appointed by the president of the University of Utah;

(ii) one member appointed by the president of Utah State University;

(iii) one member appointed by the state superintendent of public instruction;

(iv) one member appointed by the president of the Utah Education Association;

(v) one member appointed by the president of the Utah Parent Teachers Association; and

(vi) one member appointed by the director of the Department of Human Services.

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

(ii) Notwithstanding the requirements of Subsection (6)(c)(i), the appointing authority 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.

(d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(e) The committee shall meet at least annually and review investment reports prepared by the state treasurer, including information on portfolio composition and investment performance.

(7) (a) (i) Members who are not government employees 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.

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

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A state government member who is a member because of their state government position may not receive per diem or expenses for their service.

(iii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their service.

Section 2. 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;

(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, exemption [~~under Section 63-56-3~~] from the Utah Procurement Code, 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]~~ Grave 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), 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 3. Section **53C-1-203** is amended to read:

**53C-1-203. Board of trustees nominating committee -- Composition -- Responsibilities -- Per diem and expenses.**

(1) There is established an 11 member board of trustees nominating committee.

(2) (a) The State Board of Education shall appoint five members to the nominating committee from different geographical areas of the state.

(b) The governor shall appoint five members to the nominating committee as follows:

(i) one individual from a nomination list of at least two names of individuals knowledgeable about institutional trust lands submitted by the ~~[commissioner of higher education after consultation with institutional trust land beneficiaries, other than the public school trust land beneficiaries]~~ University of Utah and Utah State University on an alternating basis every four years;

(ii) one individual from a nomination list of at least two names submitted by the livestock industry;

(iii) one individual from a nomination list of at least two names submitted by the Utah Petroleum Association;

(iv) one individual from a nomination list of at least two names submitted by the Utah Mining

Association; and

(v) one individual from a nomination list of at least two names submitted by the executive director of the Department of Natural Resources after consultation with statewide wildlife and conservation organizations.

(c) The president of the Utah Association of Counties shall designate the chair of the Public Lands Steering Committee, who must be an elected county commissioner or councilor, to serve as the eleventh member of the nominating committee.

(3) (a) Except as required by Subsection (3)(b), each member shall serve a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the state board and 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.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) The nominating committee shall select a chair from its membership by majority vote.

(5) (a) The nominating committee shall nominate at least two candidates for each position or vacancy which occurs on the board of trustees except for the governor's appointee under Subsection 53C-1-202(5).

(b) The nominations shall be by majority vote of the committee.

(6) (a) (i) Members who are not government employees 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.

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

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.



(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Higher education members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Higher education members may decline to receive per diem and expenses for their service.

Section 4. Section **53C-1-204** is amended to read:

**53C-1-204. Policies established by board -- Director.**

(1) (a) The board shall establish policies for the management of the School and Institutional Trust Lands Administration.

(b) The policies shall:

(i) be consistent with the Utah Enabling Act, the Utah Constitution, and state law;

(ii) reflect undivided loyalty to the beneficiaries consistent with fiduciary duties;

(iii) require the return of not less than fair market value for the use, sale, or exchange of school and institutional trust assets;

(iv) seek to optimize trust land revenues and increase the value of trust land holdings consistent with the balancing of short and long-term interests, so that long-term benefits are not lost in an effort to maximize short-term gains;

(v) maintain the integrity of the trust and prevent the misapplication of its lands and its revenues; and

(vi) have regard for and seek General Fund appropriation compensation for the general public's use of natural and cultural resources consistent with the duties of the administration as trustee for the beneficiaries.

(2) The board shall ensure that the administration is managed according to law.

(3) The board shall establish due process procedures governing adjudicative proceedings conducted by the administration.

(4) The board and the director shall recommend to the governor and the Legislature any

necessary or desirable changes in statutes relating to the trust or their trust responsibilities.

(5) Policies adopted by the Board of State Lands and Forestry prior to the effective date of this act regarding school and institutional trust lands, shall remain in effect until amended or repealed by the board.

~~[(6) Prior to the 1995 General Session, the board shall determine and make recommendations to the governor and the Legislature regarding the feasibility of and necessity for performance audits of the administration by a certified public accounting firm on a regular basis of at least once every three years.]~~

~~[(7)]~~ (6) The board shall develop policies for the long-term benefit of the trust utilizing the broad discretion and power granted to it in this title.

~~[(8)]~~ (7) (a) (i) On at least three occasions during each calendar year and in cooperation with the director, the board shall consult with an advisory committee consisting of five county commissioners appointed by the Utah Association of Counties concerning the impact of trust land management practices on rural economies.

(ii) The director shall notify the chair of the committee prior to any proposed board actions. At the request of the committee and prior to taking the proposed action, the board shall meet with the committee at the next scheduled board meeting.

(b) The association shall appoint the commissioners from five different counties based on such factors as a county's total acreage of trust lands, the revenues generated from trust lands in the county, and the potential for economic development of trust lands within the county.

(c) The advisory committee may request additional consultations it considers necessary or appropriate, to be scheduled within a reasonable time after receipt of the request by the administration.

~~[(9)]~~ (8) The board shall utilize the services of the attorney general as provided in Section 53C-1-305.

~~[(10)]~~ (9) The board may:

(a) (i) establish advisory committees to advise the board, director, or administration on policies affecting the management of the trust, and pay the compensation and travel expenses in

accordance with rules adopted by the Division of Finance; and

(ii) after conferring with the director, hire consultants to advise the board, director, or administration on issues affecting the management of the trust, and pay compensation to the consultants from monies appropriated for that purpose;

(b) with the consent of the state risk manager, authorize the director to manage lands or interests in lands held by any other public or private party, if:

(i) all management costs are compensated by the parties;

(ii) there is a commensurate return to the beneficiaries; and

(iii) the additional responsibilities do not detract from the administration's responsibilities and its duty of undivided loyalty to the beneficiaries;

(c) issue subpoenas or authorize a hearing officer to issue subpoenas, to compel the attendance of witnesses and the production of documents in adjudicative proceedings authorized by law and administer oaths in the performance of official duties; and

(d) submit in writing to the director a request for responses, to be made within a reasonable time, to questions concerning policies and practices affecting the management of the trust.

~~[(H)]~~ (10) Board members shall be given access to all administration records and personnel consistent with law and as necessary to permit the board to accomplish its responsibilities to ensure that the administration is in full compliance with applicable policies and law.

Section 5. Section **53C-1-305** is amended to read:

**53C-1-305. Attorney general to represent administration.**

(1) The attorney general shall:

(a) represent the board, director, or administration in any legal action relating to trust lands except as otherwise provided in Subsection (3);

(b) review leases, contracts, and agreements submitted for review prior to execution; and

(c) undertake suits for the collection of royalties, rental, and other damages in the name of the state.

(2) The attorney general may institute actions against any party to enforce this title or to protect the interests of the trust beneficiaries.

(3) The administration may, with the consent of the attorney general, employ in house legal counsel to perform the duties of the attorney general under Subsections (1) and (2).

(4) In those instances where the interests of the trust beneficiaries conflict with those of state officers or executive department agencies for which the attorney general acts as legal advisor under Utah Constitution Article VII, Section 16, the board may, with the consent of the attorney general [shall appoint inhouse and], employ independent counsel[, when required, with the consent of the board] to represent and protect those interests.

Section 6. Section **53C-5-101** is amended to read:

**53C-5-101. Management of range resources.**

(1) The director is responsible for the efficient management of all range resources on lands under the director's administration, consistent with his fiduciary duties of financial support to the beneficiaries.

(2) This management shall be based on sound resource management principles.