



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

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

30 **53C-1-201. Creation of administration -- Purpose -- Director.**

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

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

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

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

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

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

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

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

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

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

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

55 (C) the reasons the normal procedures under Section 63-46a-4 cannot be met without  
56 causing the loss of the specific opportunity;

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

58 (E) that the director has filed a copy of the rule and a rule analysis, stating the specific

59 reasons and justifications for its findings, with the Division of Administrative Rules and  
60 notified interested parties as provided in Subsection 63-46a-4(7); and

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

63 (A) the board may approve, upon recommendation of the director, that exemption for  
64 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable  
65 the administration to efficiently fulfill its responsibilities under the law. The director shall  
66 consult with the director of the Department of Human Resource Management prior to making  
67 such a recommendation. The positions of director, deputy director, assistant director, legal  
68 counsel appointed under Subsection 53C-1-305(2), administrative assistant, and public affairs  
69 officer are exempt under Subsections 67-19-12(2) and 67-19-15(1);

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

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

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

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

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

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

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

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

96 (6) In connection with joint ventures for the development of trust lands and minerals  
97 approved by the board under [~~Subsection~~] Subsections 53C-1-303(4)(c) and 53C-2-401(1)(d),  
98 the administration may become a member of a limited liability company under Title 48,  
99 Chapter [~~2b~~] 2c, Utah Revised Limited Liability Company Act, and is considered a person  
100 under Section 48-2c-102 for such purposes.

101 Section 2. Section **53C-1-202** is amended to read:

102 **53C-1-202. Board of trustees membership -- Nomination list -- Qualifications --**  
103 **Terms -- Replacement -- Chair -- Quorum.**

104 (1) There is established the School and Institutional Trust Lands Board of Trustees.

105 (2) The board shall consist of seven members appointed on a nonpartisan basis by the  
106 governor with the consent of the Senate for nonconsecutive six-year terms.

107 (3) (a) Of the initial appointments to the board, the governor shall appoint one member  
108 to serve a six-year term, one member to serve a five-year term, one member to serve a four-year  
109 term, one member to serve a three-year term, one member to serve a two-year term, and one  
110 member to serve a one-year term.

111 (b) All subsequent appointments shall be for a term of six years, except if a vacancy  
112 occurs, the governor shall appoint a replacement, following the procedures set forth in  
113 Subsections (2), (4), (5), and (6), to fill the unexpired term.

114 (c) Any member of the board who has served less than six years upon the expiration of  
115 that member's term is eligible for a consecutive reappointment.

116 (d) Neither the term provision in Subsection (2) nor Subsection (3) applies to an  
117 appointment made under Subsection (5).

118 (4) (a) The governor shall select six of the seven appointees to the board from a  
119 nomination list of at least two candidates for each position or vacancy submitted pursuant to  
120 Section 53C-1-203.

121 (b) The governor may request an additional nomination list of at least two candidates  
122 from the nominating committee if the initial list of candidates for a given position is  
123 unacceptable.

124 (c) (i) If the governor fails to select an appointee within 60 days after receipt of the  
125 initial list or within 60 days after the receipt of an additional list, the nominating committee  
126 shall make an interim appointment by majority vote.

127 (ii) The interim appointee shall serve until the matter is resolved by the committee and  
128 the governor or until replaced pursuant to this chapter.

129 (5) (a) The governor may appoint one member without requiring a nomination list.

130 (b) The member appointed under Subsection (5)(a) serves at the pleasure of the  
131 governor.

132 (6) (a) Each board candidate shall possess outstanding professional qualifications  
133 pertinent to the purposes and activities of the trust.

134 (b) The board shall represent the following areas of expertise:

135 (i) nonrenewable resource management or development;

136 (ii) renewable resource management or development; and

137 (iii) real estate.

138 (c) Other qualifications which are pertinent for membership to the board are expertise  
139 in any of the following areas:

140 (i) business;

141 (ii) investment banking;

142 (iii) finance;

143 (iv) trust administration;

144 (v) asset management; and

145 (vi) the practice of law in any of the areas referred to in Subsections (6)(b) and (6)(c)(i)  
146 through (v).

147 (7) The board of trustees shall select a chair from its membership.

148 (8) Before assuming a position on the board, each member shall take an oath of office.

149 (9) Four members of the board constitute a quorum for the transaction of business.

150 (10) The governor or five board members may, for cause, remove a member of the  
151 board.

152 (11) An aggrieved party to a final action by the board may obtain judicial review of  
153 that action under ~~[Section]~~ Sections 63-46b-15 and 63-46b-16.

154 Section 3. Section **53C-2-104** is amended to read:

155 **53C-2-104. Preexisting federal mining claims on trust lands -- Filing of notice --**  
156 **Conclusive evidence of abandonment.**

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

163 (2) ~~[Prior to January 1, 1998, and annually thereafter]~~ Annually on or before December  
164 31, each owner of an unpatented lode mining claim, placer mining claim, mill site claim, or  
165 tunnel site claim located pursuant to the general mining laws of the United States on lands now  
166 owned of record by the state in trust for the common schools or other beneficiary institutions  
167 shall file with the administration a notice as prescribed by Subsection (3).

168 (3) (a) The initial notice required by Subsection (2) that is filed ~~[prior to January 1,~~  
169 ~~1998,]~~ by a claimant shall include:

- 170 (i) a statement of the owner's intention to hold or abandon the claim;
- 171 (ii) a brief description of the type and nature of the claim;
- 172 (iii) the date the claim was located, and the date the claim was filed of record in county  
173 and federal records;
- 174 (iv) a copy of the official record of the notice of location or certificate of location of the  
175 claim; and
- 176 (v) a legal description of the claim, by legal subdivision or metes and bounds  
177 description, sufficient to locate the claimed lands on the ground.

178 (b) ~~[A]~~ Each subsequent notice required by Subsection (2) ~~[that is filed after January 1,~~  
179 ~~1998,]~~ shall include:

- 180 (i) the name of the claim; and
- 181 (ii) a statement of the owner's intention to hold or abandon the claim.

182 (4) (a) The administration shall note the existence of all claims for which notices have

183 been filed in the central index of all trust lands required under Section 53C-2-101.

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

187 (5) (a) Failure to file the notice required by this section constitutes an abandonment of  
188 the claim by the owner.

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

191 (6) Filing of a notice under this section does not make valid a claim which is otherwise  
192 invalid under other applicable law.

193 (7) Acquisition of rights to extract minerals underlying trust lands is governed by Part  
194 4 of this chapter.

195 (8) This section does not waive any fees, filings, or other requirements imposed by  
196 federal law.

197 Section 4. Section **53C-2-105** is enacted to read:

198 **53C-2-105. Withdrawal of trust lands from leasing or other dispositions.**

199 (1) The director may at any time withdraw trust lands from applications for leasing,  
200 permitting, sale, or other disposition of any nature upon a finding that the interests of the trust  
201 would best be served through withdrawal.

202 (2) Any withdrawal which is in force on May 5, 2003, shall continue in force until  
203 revoked by the director.

204 Section 5. Section **53C-2-401** is amended to read:

205 **53C-2-401. Coal and mineral deposits reserved -- Exceptions.**

206 (1) (a) Except as otherwise expressly provided by law, coal and mineral deposits in  
207 trust lands are reserved to the respective trust.

208 (b) Each certificate of sale and patent issued shall contain such a reservation.

209 (c) The purchaser of any lands belonging to the trust:

210 (i) acquires no right, title, or interest in coal or mineral deposits; and

211 (ii) is subject to the conditions and limitations prescribed by law providing for the state  
212 and any person authorized by it to:

213 (A) prospect or mine;

214 (B) remove the deposits; and

215 (C) occupy and use as much of the surface of the lands as may be required for any  
216 purpose reasonably incident to the mining and removal of the deposits.

217 (d) (i) Coal and mineral deposits in trust lands may be leased on a rental and royalty  
218 basis.

219 (ii) The administration may also, with board approval, enter into joint ventures,  
220 farmout agreements, exploration agreements, operating agreements, and other business  
221 arrangements for the disposition of coal and mineral deposits in trust lands.

222 (iii) The mineral estate in trust lands may not be sold except as authorized in  
223 Subsection (2).

224 (iv) Agreements made under Subsection (1)(d)(ii) are not subject to Subsections  
225 53C-2-405(3) and (4).

226 (2) Except as otherwise prohibited by the Jones Act of January 25, 1927, 43 U.S.C.  
227 Sections 870-871, mineral interests in trust lands may be exchanged for mineral interests of  
228 comparable value or otherwise disposed of, if their retention would create a liability exceeding  
229 their value.

230 (3) (a) Common varieties of sand, gravel, and cinders are not considered to be minerals  
231 under this section but may be reserved by specific action of the director.

232 (b) Common varieties do not include deposits which are valuable because the deposit  
233 contains characteristics which give it distinct and special value.

234 Section 6. Section **72-5-203** is amended to read:

235 **72-5-203. Public easement or right of entry -- Grant -- Application -- Conditions.**

236 (1) (a) (i) Subject to Section 53C-1-302 and Subsection 53C-1-204(1), a temporary  
237 public easement or right of entry is granted for each highway existing prior to January 1, 1992,  
238 that terminates at or within or traverses any state lands and that has been constructed and  
239 maintained or used by a responsible authority.

240 (ii) The temporary public easement or right of entry granted under Subsection (1)(a)(i)  
241 is 100 feet wide for each class A and B highway.

242 (b) Each easement shall remain in effect through June 30, 2004, or until a permanent  
243 easement or right of entry has been established under Subsection (2), whichever is ~~less~~  
244 greater.

245 (2) (a) The School and Institutional Trust Lands Administration and the Division of  
246 Forestry, Fire and State Lands shall make rules in accordance with Title 63, Chapter 46a, Utah  
247 Administrative Rulemaking Act, establishing an application process for a responsible authority  
248 to obtain a permanent easement or right of entry over any temporary public easement granted  
249 under Subsection (1), subject to the provisions of Subsections (2)(b), (c), and (d).

250 (b) A grant of a permanent easement or right of entry across sovereign lands shall be  
251 made upon a showing to the Division of Forestry, Fire and State Lands that continued use of  
252 the easement will provide a public benefit commensurate with the value of the permanent  
253 easement or right of entry.

254 (c) A grant of a permanent easement or right of entry across trust lands shall be made  
255 upon a showing to the School and Institutional Trust Lands Administration that the grant is  
256 consistent with the state's fiduciary responsibilities under Section 53C-1-302 and Subsection  
257 53C-1-204(1).

258 (d) A grant of a permanent easement or right of entry across state lands other than  
259 sovereign and trust lands shall be made upon a showing to the managing unit of state  
260 government that the continued use will provide a public benefit commensurate with the value  
261 of the easement and will not unreasonably interfere with the purposes for which the land was  
262 obtained or is now held.

263 (3) The grant of the temporary public easement or right of entry under Subsection (1) is  
264 consistent with the trust responsibilities of the state and in the best interest of the state.

265 (4) A responsible authority that has been granted a permanent easement or right of  
266 entry over state lands may maintain the permanent easement or right of entry for the uses to  
267 which the permanent easement or right of entry was put prior to and including January 1, 1992,  
268 subject to the right of the managing unit of state government or private party to relocate the  
269 permanent easement or right of entry.

270 (5) The grant of a permanent easement or right of entry under this section is effective  
271 on the date the highway was originally constructed or established for public use.

272 **Section 7. Repealer.**

273 This act repeals:

274 **Section 53C-2-406, Withdrawal of trust lands from leasing.**

**Legislative Review Note**  
as of 2-13-03 3:47 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**

State Lands Amendments

19-Feb-03

**Bill Number HB0295**8:39 AM

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**State Impact**

Provisions of this bill may result in some small administrative savings. Otherwise, no fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**