

**SCHOOL AND INSTITUTIONAL TRUST
LANDS - CLARIFYING REFERENCES TO
RULES AND POLICIES**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: James R. Gowans

LONG TITLE

General Description:

This bill clarifies the School and Institutional Trust Lands Administration's authority to make administrative rules.

Highlighted Provisions:

This bill:

► clarifies that the term "rule" or its derivations shall be used to describe actions taken by the School and Institutional Trust Lands Administration that meet the requirements for rulemaking.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53C-1-201, as last amended by Chapter 192, Laws of Utah 2003

53C-1-303, as last amended by Chapter 126, Laws of Utah 1997

53C-2-201, as last amended by Chapter 299, Laws of Utah 1995

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 Title 53C, Chapter 3 [of this title], Deposit and Allocation of Revenue from Trust Lands, 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 from the Utah Procurement Code, and simultaneous adoption of ~~[policies]~~ rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, 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 Grave Protection and Repatriation Act. The director may make rules in accordance with Title 63, Chapter 46a, Administrative Rulemaking Act, to implement policies provided by the board regarding Native American remains.

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

Section 2. Section **53C-1-303** is amended to read:

53C-1-303. Responsibilities of director -- Budget review -- Legal counsel -- Contract for services.

(1) In carrying out the policies of the board of trustees and in establishing procedures and rules the director shall:

(a) take an oath of office before assuming any duties as the director;

(b) adopt procedures and rules necessary for the proper administration of matters entrusted to the director by state law and board policy;

(c) submit to the board for its review and concurrence on any rules necessary for the proper management of matters entrusted to the administration;

- (d) faithfully manage the administration under the policies established by the board;
 - (e) submit to the board and for public inspection by October 1 of each year, an annual management budget and financial plan for operations of the administration and, after approval by the board, submit the budget to the governor;
 - (f) direct and control the budget expenditures as finally authorized and appropriated;
 - (g) establish job descriptions and employ, within the limitation of the budget, staff necessary to accomplish the purposes of the office subject to Section 53C-1-201;
 - (h) establish, in accordance with generally accepted principles of fund accounting, a system to identify and account for the assets and vested interests of each beneficiary;
 - (i) maintain appropriate records of trust activities to enable auditors appointed by appropriate state agencies or the board to conduct periodic audits of trust activities;
 - (j) provide that all leases, contracts, and agreements be submitted to legal counsel for review of compliance with applicable law and fiduciary duties prior to execution and utilize the services of the attorney general as provided in Section 53C-1-305;
 - (k) keep the board, beneficiaries, governor, Legislature, and the public informed about the work of the director and administration by reporting to the board in a public meeting at least once during each calendar quarter; and
 - (l) respond in writing within a reasonable time to a request by the board for responses to questions on policies and practices affecting the management of the trust.
- (2) Procedures and rules adopted by the Division of State Lands and Forestry as they relate to trust lands prior to the effective date of this act remain in effect until amended or repealed by the director.
- (3) The administration shall be the named party in substitution of the Division of State Lands and Forestry or its predecessor agencies, with respect to all documents affecting trust lands from the effective date of this act.
- (4) The director may:
- (a) with the consent of the state risk manager and the board, manage lands or interests in lands held by any other public or private party pursuant to policies established by the board and

may make rules to implement these board policies;

(b) sue or be sued as the director of school and institutional trust lands;

(c) contract with other public agencies for personnel management services;

(d) contract with any public or private entity to make improvements to or upon trust lands and to carry out any of the responsibilities of the office, so long as the contract requires strict adherence to trust management principles, applicable law and regulation, and is subject to immediate suspension or termination for cause; and

(e) with the approval of the board enter into joint ventures and other business arrangements consistent with the purposes of the trust.

(5) Any application or bid required for the lease, permitting, or sale of lands in a competitive process or any request for review pursuant to Section 53C-1-304 shall be considered filed or made on the date received by the appropriate administrative office, whether transmitted by United States mail or in any other manner.

Section 3. Section **53C-2-201** is amended to read:

53C-2-201. Planning procedures -- Assistance from other state agencies -- Plans consistent with trust responsibilities.

(1) The director:

(a) shall develop rules describing the degree of planning necessary for each category of activity on trust lands; and

(b) may request other state agencies to generate technical data or other support services for the development and implementation of trust lands plans.

(2) The plans for school and institutional trust lands shall be:

(a) developed in a manner consistent with the director's responsibility to insure that the interest of the trust beneficiaries is paramount; and

(b) if required by rule, approved by the board.

(3) The director shall [~~adopt policies~~] make rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for notifying and consulting with interested parties under this section.

(4) Subject to Subsection [~~53C-2-201~~](1), the development of a written plan is not a prerequisite to actions by the director.