

## HB0051S01 compared with HB0051

~~text~~ shows text that was in HB0051 but was deleted in HB0051S01.

inserted text shows text that was not in HB0051 but was inserted into HB0051S01.

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Representative Roger E. Barrus proposes the following substitute bill:

### SCHOOL AND INSTITUTIONAL TRUST LANDS

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Roger E. Barrus**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies provisions of the School and Institutional Trust Lands Management Act.

##### Highlighted Provisions:

This bill:

- ▶ deletes obsolete language;
- ▶ exempts the School and Institutional Trust Lands Administration (administration) from the petition process provisions of the Administrative Rulemaking Act;
- ▶ exempts the Administration from fee agency provisions in the Budgetary Procedures Act;
- ▶ makes modifications to School and Institutional Trust Lands Board of Trustees (board) terms and replacement appointments;

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- ▶ specifically grants the director authority to acquire and dispose of lands and assets;
- ▶ modifies the judicial review process of the board and administration;
- ▶ ~~{repeals a section pertaining to information provided to}~~ allows the administration ~~{~~ and the handling of that} to request financial information from certain providers;
- ▶ modifies the mining claim administration fee;
- ▶ authorizes the director to withdraw lands from surface occupancy or use when there is a potential for resource degradation;
- ▶ modifies the requirements that a person who degrades trust lands must meet in restoring the land;
- ▶ requires the Permanent Community Impact Fund Board to consult with the administration before awarding certain grants;
- ▶ allows a lease or permit which includes an option to purchase at a future date to be negotiated in a method other than through a public competitive process; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**9-4-307**, as last amended by Laws of Utah 2008, Chapter 382

**53C-1-201**, as last amended by Laws of Utah 2010, Chapter 218

**53C-1-202**, as last amended by Laws of Utah 2008, Chapter 382

**53C-1-203**, as last amended by Laws of Utah 2010, Chapter 286

**53C-1-204**, as last amended by Laws of Utah 2000, Chapter 237

**53C-1-302**, as last amended by Laws of Utah 1997, Chapter 126

**53C-1-303**, as last amended by Laws of Utah 2004, Chapter 63

**53C-1-304**, as last amended by Laws of Utah 2008, Chapter 382

**53C-2-102**, as last amended by Laws of Utah 2005, Chapter 67

**53C-2-103**, as enacted by Laws of Utah 1994, Chapter 294

**53C-2-104**, as last amended by Laws of Utah 2003, Chapter 192

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53C-2-105, as enacted by Laws of Utah 2003, Chapter 192

53C-2-301, as last amended by Laws of Utah 1997, Chapter 72

53C-2-404, as enacted by Laws of Utah 1994, Chapter 294

53C-2-407, as last amended by Laws of Utah 2005, Chapter 39

53C-3-101, as last amended by Laws of Utah 2004, Chapter 349

53C-3-203, as last amended by Laws of Utah 2010, Chapters 79 and 262

53C-4-101, as last amended by Laws of Utah 1997, Chapter 126

53C-4-102, as last amended by Laws of Utah 2004, Chapter 40

53C-4-201, as last amended by Laws of Utah 1995, Chapter 299

53C-4-301, as last amended by Laws of Utah 2004, Chapter 40

63J-1-504, as last amended by Laws of Utah 2010, Chapter 146

63L-2-201, as renumbered and amended by Laws of Utah 2008, Chapter 382

~~{REPEALS:~~

~~53C-2-102, as last amended by Laws of Utah 2005, Chapter 67~~

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

Section 1. Section **9-4-307** is amended to read:

**9-4-307. Impact fund administered by impact board -- Eligibility for assistance --**

**Review by board -- Administration costs -- Annual report.**

(1) (a) The impact board shall:

(i) administer the impact fund in a manner that will keep a portion of the impact fund revolving;

(ii) determine provisions for repayment of loans; ~~[and]~~

(iii) establish criteria for determining eligibility for assistance under this part~~[-]; and~~

(iv) consult with the School and Institutional Trust Lands Administration before awarding a grant described in Subsection 9-4-303(6).

(b) (i) Criteria for awarding loans or grants made from funds described in Subsection 9-4-303(5) shall be consistent with Subsection 9-4-303(5).

(ii) Criteria for awarding grants made from funds described in Subsection 9-4-303(2)(c) shall be consistent with Subsection 9-4-303(6).

(c) In order to receive assistance under this part, subdivisions and interlocal agencies

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shall submit formal applications containing the information that the impact board requires.

(2) In determining eligibility for loans and grants under this part, the impact board shall consider the following:

- (a) the subdivision's or interlocal agency's current mineral lease production;
- (b) the feasibility of the actual development of a resource that may impact the subdivision or interlocal agency directly or indirectly;
- (c) current taxes being paid by the subdivision's or interlocal agency's residents;
- (d) the borrowing capacity of the subdivision or interlocal agency, its ability and willingness to sell bonds or other securities in the open market, and its current and authorized indebtedness;
- (e) all possible additional sources of state and local revenue, including utility user charges;
- (f) the availability of federal assistance funds;
- (g) probable growth of population due to actual or prospective natural resource development in an area;
- (h) existing public facilities and services;
- (i) the extent of the expected direct or indirect impact upon public facilities and services of the actual or prospective natural resource development in an area; and
- (j) the extent of industry participation in an impact alleviation plan, either as specified in Title 63M, Chapter 5, Resource Development Act, or otherwise.

(3) The impact board may not fund any education project that could otherwise have reasonably been funded by a school district through a program of annual budgeting, capital budgeting, bonded indebtedness, or special assessments.

(4) The impact board may restructure all or part of the agency's or subdivision's liability to repay loans for extenuating circumstances.

(5) The impact board shall:

(a) review the proposed uses of the impact fund for loans or grants before approving them and may condition its approval on whatever assurances that the impact board considers to be necessary to ensure that the proceeds of the loan or grant will be used in accordance with the Leasing Act and this part; and

(b) ensure that each loan specifies the terms for repayment and is evidenced by general

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obligation, special assessment, or revenue bonds, notes, or other obligations of the appropriate subdivision or interlocal agency issued to the impact board under whatever authority for the issuance of those bonds, notes, or obligations exists at the time of the loan.

(6) The impact board shall allocate from the impact fund to the department those funds that are appropriated by the Legislature for the administration of the impact fund, but this amount may not exceed 2% of the annual receipts to the impact fund.

(7) The department shall make an annual report to the Legislature concerning the number and type of loans and grants made as well as a list of subdivisions and interlocal agencies that received this assistance.

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 Title 53C, Chapter 3, Deposit and Allocation of Revenue from Trust Lands, and Sections 51-7a-201 and 51-7a-202.

(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 provided in this Subsection (3).

(b) (i) 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 63G-2-305, for as long as is necessary to evaluate the proposal.

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

(iii) The administration shall classify the proposal pursuant to law if it decides to proceed with the proposal.

(iv) Section 63G-2-403 does not apply during the review period.

(c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that the administration is not subject to Subsections

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63G-3-301(6) and (7) and Section 63G-3-601, and 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:

- (i) the changes in business opportunities affecting the assets of the trust;
  - (ii) the specific business opportunity arising out of those changes which may be lost without the rule or changes to the rule;
  - (iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without causing the loss of the specific opportunity;
  - (iv) approval by at least five board members; and
  - (v) 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 63G-3-301(10).
- (d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel Management Act, except as provided in this Subsection (3)(d).
- (ii) 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 executive director of the Department of Human Resource Management prior to making such a recommendation.
- (iii) The positions of director, deputy director, associate director, assistant director, legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).
- (iv) Salaries for exempted positions, except for the director, shall be set by the director, after consultation with the executive 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.
- (v) 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.
- (e) The administration shall comply with Title 63G, Chapter 6, Utah Procurement

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Code, except where the board approves, upon recommendation of the director, exemption from the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for procurement, which enable the administration to efficiently fulfill its responsibilities under the law.

~~[(f) (i) The board and director shall review the exceptions under this Subsection (3) 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.]~~

(f) The administration is not subject to the fee agency requirements of Section 63J-1-504.

(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 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement policies provided by the board regarding Native American remains.

(6) In connection with joint ventures ~~[for the development of]~~ and other transactions involving trust lands and minerals approved by the board under Sections 53C-1-303 and 53C-2-401, 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.

Section 3. Section **53C-1-202** is amended to read:

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

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

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

~~[(3)(a) Of the initial appointments to the board, the governor shall appoint one member to serve a six-year term, one member to serve a five-year term, one member to serve a four-year term, one member to serve a three-year term, one member to serve a two-year term, and one member to serve a one-year term.]~~

(3) (a) Except for the appointment made pursuant to Subsection (5), all appointments to the board shall be for a non-consecutive term of six years, or until a replacement has been appointed and confirmed pursuant to Subsection (2).

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

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

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

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

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

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

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

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

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

(6) (a) Each board candidate shall possess outstanding professional qualifications

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pertinent to the purposes and activities of the trust.

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

- (i) nonrenewable resource management or development;
- (ii) renewable resource management or development; and
- (iii) real estate.

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

- (i) business;
- (ii) investment banking;
- (iii) finance;
- (iv) trust administration;
- (v) asset management; and
- (vi) the practice of law in any of the areas referred to in Subsections (6)(b) and (6)(c)(i)

through (v).

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

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

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

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

~~[(11) An aggrieved party to a final action by the board may obtain judicial review of that action under Sections 63G-4-402 and 63G-4-403.]~~

Section 4. 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 University of Utah and Utah State University on an alternating basis every four years;

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(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 and vice 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 member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

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63A-3-107.

Section 5. 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 board and 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)]~~ (5) 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.

~~[(7)]~~ (6) (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

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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.

~~[(8)]~~ (7) The board shall utilize the services of the attorney general as provided in Section 53C-1-305.

~~[(9)]~~ (8) 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 money 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

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the trust.

~~[(10)]~~ (9) 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 6. Section **53C-1-302** is amended to read:

### **53C-1-302. Management of the administration -- Trust responsibilities.**

(1) (a) The director has broad authority to:

(i) manage the School and Institutional Trust Lands Administration in fulfillment of its purpose; ~~[and]~~

(ii) establish fees, procedures, and rules consistent with general policies prescribed by the board of trustees~~[-]; and~~

(iii) acquire and dispose of lands and assets in accordance with law.

(b) The procedures and rules shall:

(i) be consistent with the Utah Enabling Act, the Utah Constitution, and policies of the board;

(ii) reflect undivided loyalty to the beneficiaries consistent with the director's fiduciary duties and responsibilities;

(iii) subject to Subsection (2), obtain the optimum values from use of trust lands and revenues for the trust beneficiaries, including the return of not less than fair market value for the use, sale, or exchange of school and institutional trust assets; and

(iv) be broadly construed to grant the board, director, and administration full discretionary authority to manage, maintain, or dispose of trust assets in the manner they consider most favorable to the beneficiaries.

(2) The director shall seek to optimize trust land revenues 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.

(3) The director shall maintain the integrity of the trust and prevent, through prudent management, the misapplication of its lands and revenues.

Section 7. Section **53C-1-303** is amended to read:

### **53C-1-303. Responsibilities of director -- Budget review -- Legal counsel --**

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### 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)]~~ (2) The administration shall be the named party in substitution of the Division of

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State Lands and Forestry or its predecessor agencies, with respect to all documents affecting trust lands from the effective date of this act.

~~[(4)]~~ (3) 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)]~~ (4) 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 8. Section **53C-1-304** is amended to read:

**53C-1-304. Rules to ensure procedural due process -- Board review of director action -- Judicial review.**

(1) The board shall make rules to ensure procedural due process in the resolution of complaints concerning actions by the board, director, ~~[and]~~ or the administration.

(2) (a) ~~[An]~~ Except as provided in Subsection (2)(b), an aggrieved party to a final action by the director or the administration may petition the board for administrative review of the decision.

(b) Final actions by the director or administration to lease, sell, or exchange specific real property or other trust assets are not subject to administrative review.

(3) (a) The board may appoint a qualified hearing examiner for purposes of taking evidence and making recommendations for board action.

(b) The board shall consider the recommendations of the examiner in making

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decisions.

(4) (a) The board shall uphold the decision of the director or the administration unless it finds, by a preponderance of the evidence, that the decision violated applicable law, policy, or rules.

(b) The board shall base its final actions on findings and conclusions and shall inform the aggrieved party of its right to judicial review.

(5) An aggrieved party to a final action by the board may obtain judicial review of that action under Sections 63G-4-402 and 63G-4-403.

Section 9. Section 53C-2-102 is amended to read:

**53C-2-102. Information to be furnished by provider -- Director to adopt confidential information rules.**

(1) As used in this section, "provider" means a prospective applicant, applicant, partner, or lessee.

(2) (a) The administration may require a provider to furnish any information necessary to carry out the duties of this title, including financial information, geological and mine maps, well logs, and assays.

(b) Any information submitted to the administration which the provider and the director agree in writing is of a proprietary nature shall be kept confidential and may not be released without written permission from the provider.

(3) The director shall adopt rules under which the administration may retain, without disclosure to third parties, information including that received under Subsection (2) which the provider and the director agree is of a protected or proprietary nature, unless the information is required by federal or state law to be of a nonproprietary nature.

Section ~~9~~10. Section 53C-2-103 is amended to read:

**53C-2-103. Director's authority to examine records and inspect property.**

~~(1)~~ For the purpose of determining compliance with any rule or any performance or payment obligation under a lease, permit, or contract, the director may, at reasonable times, places, and intervals:

~~(a)~~ (1) require that the lessee, permittee, or contractor provide any pertinent books, records, or other documents of the lessee, permittee, or contractor; ~~or~~ and

~~(b)~~ (2) inspect the property acquired, used, or developed under the lease, permit, or

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contract after reasonable notice or as provided in the lease, permit, or contract.

~~[(2) Nothing in this section shall be construed to limit or invalidate audits conducted by the Division of State Lands and Forestry prior to the effective date of this act.]~~

Section ~~10~~11. 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) Annually 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).

(3) (a) The initial notice required by Subsection (2) that is filed by a claimant 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) Each subsequent notice required by Subsection (2) shall include:

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

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

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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~~] \$100 per claim, to defray the administrative costs of maintaining an index of claims.

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

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

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

Section ~~{11}~~12. Section **53C-2-105** is amended to read:

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

~~{1}~~ The director may at any time withdraw trust lands from:

(1) applications for leasing, permitting, sale, or other disposition of any nature upon a finding that the interests of the trust would best be served through withdrawal~~[-];~~ or

(2) surface occupancy or use upon a finding that continued use would cause resource degradation.

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

Section ~~{12}~~13. Section **53C-2-301** is amended to read:

### **53C-2-301. Trespassing on trust lands -- Penalties.**

(1) A person is liable for the civil damages prescribed in Subsection (2) and, unless a greater penalty is prescribed in another part of the law, is guilty of a class B misdemeanor if the person, without written authorization from the director:

(a) removes, extracts, uses, consumes, or destroys any mineral resource, gravel, sand, soil, vegetation, water resource, or improvement on trust lands;

(b) grazes livestock on trust lands;

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- (c) uses, occupies, or constructs improvements or structures on trust lands;
- (d) uses or occupies trust lands for more than 30 days after the cancellation or expiration of written authorization;
- (e) knowingly and willfully uses trust lands for commercial gain;
- (f) appropriates, alters, injures, or destroys any improvement or any historical, prehistorical, archaeological, or paleontological resource on trust lands;
- (g) trespasses upon, uses, commits waste, dumps refuse, or occupies trust land;
- (h) interferes with the activities of an employee or agent of the administration on trust lands; or
- (i) interferes with activities of a lessee or other person which have been authorized by the administration.

(2) A person who commits any act described in Subsection (1) is liable for damages in the amount of whichever of the following is greatest:

- (a) three times the value at the point of sale of the mineral or other resource removed, destroyed, or extracted;
- (b) three times the amount of damage committed;
- (c) three times the cost to cure the damage;
- ~~(c)~~ (d) three times the value of any losses suffered as a result of interference with authorized activities; or
- ~~(d)~~ (e) three times the consideration which would have been charged by the director for use of the land during the period of trespass~~[, whichever is greater]~~.

(3) In addition to the damages described in Subsection (2), a person found guilty of a criminal act under Subsection (1) is subject to the penalties provided in Title 76, Chapter 3, Punishments.

(4) The director shall deposit money collected under this section in the fund in which like revenues from that land would be deposited.

(5) The director may award a portion of any of the damages collected under this section in excess of actual damages to the general fund of the county in which the trespass occurred as a reward for county assistance in the apprehension and prosecution of the trespassing party.

Section ~~13~~14. Section **53C-2-404** is amended to read:

**53C-2-404. Applicants for mineral leases -- Qualifications.**

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Applicants for mineral leases must, throughout the application period and throughout the duration of the lease, be in full compliance with all of the laws of the state as to qualification to do business within the state and must not be in default under those laws or the rules of the administration.

Section ~~{14}~~15. 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 another 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]~~ 10 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) In cases of identical bids of successful bidders:

(i) the right to lease shall be determined by drawing or oral auction;

(ii) the determination of whether to award the lease by drawing or oral auction shall be made at the sole discretion of the director; and

(iii) the drawing or oral auction shall be held in public at the administration's office in a manner calculated to optimize the return to the trust land beneficiary.

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(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~~] Subject to Section 53C-2-104, 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 prevent the director from negotiating the accommodation of vested rights through any method acceptable to the parties.

(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 ~~15~~16. Section **53C-3-101** is amended to read:

### **53C-3-101. Land Grant Management Fund -- Contents -- Use of money.**

(1) (a) There is created an enterprise fund known as the Land Grant Management Fund.

(b) This fund shall consist of:

(i) all revenues derived from trust lands except revenues from the sale of those lands;

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- (ii) all interest earned by the fund;
- (iii) all revenues deposited in the fund in accordance with Subsection 41-22-19(3); and
- (iv) all revenues obtained from other activities of the director or administration.

(2) The director may expend money:

(a) from the Land Grant Management Fund in accordance with the approved budget for the support of director and administration activities; and

(b) deposited in the fund in accordance with Subsection 41-22-19(3) as necessary to fulfill the purposes of Subsection 41-22-19(3)(b).

(3) Except for revenues deposited under Subsection (1)(b)(iii), any amount in excess of that required to fund the budget shall be distributed to the various trust beneficiaries as of June 30 of each calendar year, and at other times determined by the director, in shares equal to the portion of total Land Grant Management Fund revenues obtained from each beneficiary's land during the accounting period.

(4) Money from the lease or rental of school trust lands or from the use, sale, or lease of resources on school trust lands, all sums paid for fees, [~~including grazing fees,~~] and all forfeitures or penalties received in connection with those transactions shall be deposited in the Permanent State School Fund.

(5) Money from the lease or rental of lands acquired by the state for the benefit of an institution named in Sections 7, 8, and 12 of the Utah Enabling Act, or from the use, sale, or lease of renewable or nonrenewable resources on those lands, and all forfeitures or penalties received in connection with those transactions, shall be distributed to the institution.

(6) Except for revenues deposited under Subsection (1)(b)(iii), any remaining money, including interest earned on the account, shall be distributed in pro rata shares to the various beneficiaries.

Section ~~16~~17. Section **53C-3-203** is amended to read:

### **53C-3-203. Land Exchange Distribution Account.**

(1) As used in this section, "account" means the Land Exchange Distribution Account created in Subsection (2)(a).

(2) (a) There is created within the General Fund a restricted account known as the Land Exchange Distribution Account.

(b) The account shall consist of revenue deposited in the account as required by

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Section 53C-3-202.

(3) (a) The state treasurer shall invest money in the account according to Title 51, Chapter 7, State Money Management Act.

(b) The Division of Finance shall deposit interest or other earnings derived from investment of account money into the General Fund.

(4) The Legislature shall annually appropriate from the account in the following order:

(a) \$1,000,000 to the Constitutional Defense Restricted Account, created in 63C-4-103, to be used in accordance with Subsection 63C-4-103(6) for:

- (i) fiscal year 2010-11;
- (ii) fiscal year 2011-12; and
- (iii) fiscal year 2012-13; and

(b) from the deposits to the account remaining after the appropriation in Subsection (4)(a), the following amounts:

(i) 55% of the deposits to counties in amounts proportionate to the amounts of mineral revenue generated from the acquired land, exchanged land, acquired mineral interests, or exchanged mineral interests located in each county, to be used to mitigate the impacts caused by mineral development;

(ii) 25% of the deposits to counties in amounts proportionate to the total surface and mineral acreage within each county that was conveyed to the United States under the agreement or an exchange, to be used to mitigate the loss of mineral development opportunities resulting from the agreement or exchange;

(iii) 1.68% of the deposits to the State Board of Education, to be used for education research and experimentation in the use of staff and facilities designed to improve the quality of education in Utah;

(iv) 1.66% of the deposits to the Geological Survey, to be used for natural resources development in the state;

(v) 1.66% of the deposits to the Water Research Laboratory at Utah State University, to be used for water development in the state; and

(vi) 7.5% of the deposits to the Constitutional Defense Restricted Account created in Section 63C-4-103.

(5) Beginning with fiscal year 2009-10, the Legislature shall annually appropriate 1%

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of the deposits remaining in the account after the appropriation is made in accordance with Subsection (4)(a) to the Geological Survey, to be used for test wells, other hydrologic studies, and air quality monitoring in the West Desert.

(6) (a) Beginning with fiscal year 2009-10, the Legislature shall annually appropriate 6.5% of the deposits remaining in the account after the appropriation is made in Subsection (4)(a) to the Permanent Community Impact Fund created in Section 9-4-303, to be used for grants to political subdivisions of the state to mitigate the impacts resulting from the development or use of school and institutional trust lands.

(b) The Permanent Community Impact Fund Board shall consult with the administration before awarding the grants described in Subsection (6)(a).

Section ~~{17}~~18. Section **53C-4-101** is amended to read:

### **53C-4-101. Criteria for sale, lease, exchange, or other disposition of trust lands.**

(1) (a) The director shall establish criteria by rule for the sale, exchange, lease, or other disposition or conveyance of trust lands, including procedures for determining fair market value of those lands.

(b) (i) Nothing in this title or in the administration's rules and procedures shall be considered to require the director or the administration to execute any transaction for the disposition of trust lands on terms that the director determines by a written finding to be unfavorable to the beneficiaries.

(ii) The director shall send a copy of the written finding to each board member for review and comment.

~~[(2) The governor pursuant to P.L. 103-93 and in collaboration with the board shall implement the inholdings land exchange authorized in that public law.]~~

~~[(3)]~~ (2) The governor, with the consent of the board, may participate in [similar] efforts and initiatives related to school and institutional trust lands inholdings.

Section ~~{18}~~19. 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.

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(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, contract, 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, or acceptance of appropriate conveyance documents in satisfaction of a land exchange, the governor, or the governor's designee, shall issue a patent to the purchaser, heir, assignee, successor in interest, or other grantee as determined by the director.

(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

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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.

Section ~~{19}~~20. Section **53C-4-201** is amended to read:

**53C-4-201. Surface leases and user permits -- Procedures for issuing leases and user permits.**

(1) The director may issue surface leases and user permits of trust lands for any term consistent with sound and prudent real estate practices.

(2) This section does not apply to leases for grazing, oil, gas, and hydrocarbons, or other minerals.

(3) (a) (i) Surface leases or user permits may be entered into by negotiation, public auction, or other public competitive bidding process as determined by rules of the director.

~~[(ii) Any lease or permit which includes an option to purchase at a future date must be entered into through a public competitive process.]~~

(ii) The director may lease trust lands for development and subsequent sale of all or portions of such lands to third parties for no less than fair market value.

(b) Requests for proposals (RFP) on trust lands may be offered by the director after public notice.

Section ~~{20}~~21. Section **53C-4-301** is amended to read:

**53C-4-301. Exchange of trust lands -- Based on equal value -- Lands encumbered by a lease.**

(1) (a) In accordance with rules of the director, trust lands or other trust assets may be exchanged for other land or other assets.

(b) The director~~[, upon authorization from the governor,]~~ shall ~~[execute and]~~ deliver the necessary patents to other proprietors and receive proper deeds for the lands exchanged.

~~[(c) The director may not make an exchange until a deed or patent for the land received in exchange has been issued by the proprietors.]~~

(c) The director shall issue, deliver, and accept conveyance documents in land exchanges in accordance with accepted real estate closing practices.

(2) (a) If trust lands are encumbered by an existing lease, the director may, upon approval of an exchange, and with the consent of the lessee, terminate the existing lease and

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issue a lease of the same type on lands [~~of comparable acreage or value~~] which may be acquired in the same exchange in which the leased lands are used as base.

(b) The state shall honor all vested rights upon acceptance of exchanged lands.

Section ~~21~~22. Section **63J-1-504** is amended to read:

**63J-1-504. Fees -- Adoption, procedure, and approval -- Establishing and assessing fees without legislative approval.**

(1) As used in this section:

(a) (i) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(ii) "Agency" does not mean the Legislature or its committees.

(b) "Fee agency" means any agency that is authorized to establish fees.

(c) "Fee schedule" means the complete list of fees charged by a fee agency and the amount of those fees.

(2) Each fee agency shall adopt a schedule of fees assessed for services provided by the fee agency that are:

(a) reasonable, fair, and reflect the cost of services provided; and

(b) established according to a cost formula determined by the director of the Governor's Office of Planning and Budget and the director of the Division of Finance in conjunction with the agency seeking to establish the fee.

(3) Except as provided in Subsection (6), a fee agency may not:

(a) set fees by rule; or

(b) create, change, or collect any fee unless the fee has been established according to the procedures and requirements of this section.

(4) Each fee agency that is proposing a new fee or proposing to change a fee shall:

(a) present each proposed fee at a public hearing, subject to the requirements of Title 52, Chapter 4, Open and Public Meetings Act;

(b) increase, decrease, or affirm each proposed fee based on the results of the public hearing;

(c) except as provided in Subsection (6), submit the fee schedule to the Legislature as part of the agency's annual appropriations request; and

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(d) where necessary, modify the fee schedule to implement the Legislature's actions.

(5) (a) Each fee agency shall submit its fee schedule or special assessment amount to the Legislature for its approval on an annual basis.

(b) The Legislature may approve, increase or decrease and approve, or reject any fee submitted to it by a fee agency.

(6) After conducting the public hearing required by this section, a fee agency may establish and assess fees without first obtaining legislative approval if:

(a) (i) the Legislature creates a new program that is to be funded by fees to be set by the Legislature;

(ii) the new program's effective date is before the Legislature's next annual general session; and

(iii) the fee agency submits the fee schedule for the new program to the Legislature for its approval at a special session, if allowed in the governor's call, or at the next annual general session of the Legislature, whichever is sooner;

(b) the Division of Occupational and Professional licensing makes a special assessment against qualified beneficiaries under the Residence Lien Restriction and Lien Recovery Fund Act as provided in Subsection 38-11-206(1); or

(c) (i) the fee agency proposes to increase or decrease an existing fee for the purpose of adding or removing a transactional fee that is charged or assessed by a non-governmental third party but is included as part of the fee charged by the fee agency;

(ii) the amount of the increase or decrease in the fee is equal to the amount of the transactional fee charged or assessed by the non-governmental third party; and

(iii) the increased or decreased fee is submitted to the Legislature for its approval at a special session, if allowed in the governor's call, or at the next annual session of the Legislature, whichever is sooner.

(7) (a) Each fee agency that wishes to change any fee shall submit to the governor as part of the agency's annual appropriation request a list that identifies:

(i) the title or purpose of the fee;

(ii) the present amount of the fee;

(iii) the proposed new amount of the fee;

(iv) the percent that the fee will have increased if the Legislature approves the higher

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fee;

(v) the estimated total annual revenue change that will result from the change in the

fee;

(vi) the account or fund into which the fee will be deposited; and

(vii) the reason for the change in the fee.

(b) (i) The governor may review and approve, modify and approve, or reject the fee increases.

(ii) The governor shall transmit the list required by Subsection (7)(a), with any modifications, to the Legislative Fiscal Analyst with the governor's budget recommendations.

(c) Bills approving any fee change shall be filed before the beginning of the Legislature's annual general session, if possible.

(8) The School and Institutional Trust Lands Administration, established in 53C-1-201, is exempt from the requirements of this section.

Section ~~{22}~~23. Section **63L-2-201** is amended to read:

**63L-2-201. Federal government acquisition of real property in the state.**

(1) As used in this section:

(a) "Agency" is defined in Section 63G-10-102.

(b) "Agency" includes:

(i) the School and Institutional Trust Lands Administration created in Section 53C-1-201; and

(ii) the School and Institutional Trust Lands Board of Trustees created in Section 53C-1-202.

(2) (a) Before legally binding the state by executing an agreement to sell or transfer to the United States government 10,000 or more acres of any state lands or school and institutional trust lands, an agency shall submit the agreement or proposal:

(i) to the Legislature for its approval or rejection; or

(ii) in the interim, to the Legislative Management Committee for review of the agreement or proposal.

(b) The Legislative Management Committee may:

(i) recommend that the agency execute the agreement or proposal;

(ii) recommend that the agency reject the agreement or proposal; or

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(iii) recommend to the governor that the governor call a special session of the Legislature to review and approve or reject the agreement or proposal.

(3) Before legally binding the state by executing an agreement to sell or transfer to the United States government less than 10,000 acres of any state lands or school and institutional trust lands, an agency shall ~~report to~~ notify the Natural Resources, Agriculture, and Environment Interim Committee.

(4) Notwithstanding Subsections (2) and (3), the Legislature approves all conveyances of school trust lands to the United States government made for the purpose of completing the Red Cliffs Desert Reserve in Washington County.

~~{ Section 23. Repealer:~~

~~— This bill repeals:~~

~~— Section 53C-2-102, Information to be furnished by provider -- Director to adopt confidential information rules.~~

~~Legislative Review Note~~

~~— as of 1-19-11 4:41 PM~~

~~— Office of Legislative Research and General Counsel}~~