

SCHOOL AND INSTITUTIONAL TRUST LANDS AND FUNDS MANAGEMENT PROVISIONS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Melvin R. Brown

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies and enacts provisions relating to the management of state trust lands and funds.

Highlighted Provisions:

This bill:

▶ modifies provisions relating to the director of the School Children's Trust Section, including:

- the required qualifications of the director;
- the removal of the director; and
- the duties of the director;

▶ modifies provisions relating to the School Children's Trust Section;

▶ requires the School Children's Trust Section to provide staff support to the nominating committee for board members of the School and Institutional Trust Lands Administration;

▶ enacts the School and Institutional Trust Fund Management Act;

▶ establishes the School and Institutional Trust Fund Office, a board of trustees of the Office, and the position of director of the office;

▶ provides for the management of a fund consisting of money from the sale or use of land granted to the state under the Utah Enabling Act and other proceeds, revenue,



28 and assets;

29 ▶ provides for a nominating committee for members of the School and Institutional
30 Trust Fund Board of Trustees; and

31 ▶ repeals Investment of Land Grant Trust Fund Money provisions.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **53A-16-101.6**, as enacted by Laws of Utah 2012, Chapter 224

39 **53C-1-201**, as last amended by Laws of Utah 2013, Chapters 220 and 412

40 **53C-1-203**, as last amended by Laws of Utah 2012, Chapter 224

41 ENACTS:

42 **53D-1-101**, Utah Code Annotated 1953

43 **53D-1-102**, Utah Code Annotated 1953

44 **53D-1-103**, Utah Code Annotated 1953

45 **53D-1-104**, Utah Code Annotated 1953

46 **53D-1-105**, Utah Code Annotated 1953

47 **53D-1-201**, Utah Code Annotated 1953

48 **53D-1-202**, Utah Code Annotated 1953

49 **53D-1-203**, Utah Code Annotated 1953

50 **53D-1-301**, Utah Code Annotated 1953

51 **53D-1-302**, Utah Code Annotated 1953

52 **53D-1-303**, Utah Code Annotated 1953

53 **53D-1-304**, Utah Code Annotated 1953

54 **53D-1-401**, Utah Code Annotated 1953

55 **53D-1-402**, Utah Code Annotated 1953

56 **53D-1-403**, Utah Code Annotated 1953

57 **53D-1-501**, Utah Code Annotated 1953

58 **53D-1-502**, Utah Code Annotated 1953

- 59 **53D-1-503**, Utah Code Annotated 1953
- 60 **53D-1-601**, Utah Code Annotated 1953
- 61 **53D-1-602**, Utah Code Annotated 1953
- 62 **53D-1-603**, Utah Code Annotated 1953
- 63 **53D-1-604**, Utah Code Annotated 1953
- 64 **53D-1-701**, Utah Code Annotated 1953
- 65 **53D-1-702**, Utah Code Annotated 1953

66 REPEALS:

- 67 **51-7a-101**, as last amended by Laws of Utah 2011, Chapter 342
- 68 **51-7a-102**, as enacted by Laws of Utah 2006, Chapter 277
- 69 **51-7a-201**, as enacted by Laws of Utah 2006, Chapter 277
- 70 **51-7a-202**, as enacted by Laws of Utah 2006, Chapter 277
- 71 **51-7a-301**, as last amended by Laws of Utah 2010, Chapter 286
- 72 **51-7a-302**, as enacted by Laws of Utah 2006, Chapter 277



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

75 Section 1. Section **53A-16-101.6** is amended to read:

76 **53A-16-101.6. Creation of School Children's Trust Section -- Duties.**

77 (1) As used in this section:

- 78 (a) "School and institutional trust lands" is as defined in Section **53C-1-103**.
- 79 (b) "Section" means the School Children's Trust Section created in this section.
- 80 (c) "Trust" means:
 - 81 (i) the School LAND Trust Program created in Section **53A-16-101.5**; and
 - 82 (ii) the lands and funds associated with the trusts described in Subsection
 - 83 **53C-1-103**(7).

84 (2) There is established a School Children's Trust Section within the State Office of
85 Education.

86 (3) (a) The section shall have a director.

87 (b) The director shall have professional qualifications and expertise in the areas
88 generating revenue to the trust, including:

- 89 (i) economics;

- 90 (ii) energy development;
- 91 (iii) finance;
- 92 (iv) investments;
- 93 [~~(iv)~~] (v) public education;
- 94 [~~(v)~~] (vi) real estate;
- 95 [~~(vi)~~] (vii) renewable resources; [and]
- 96 (viii) risk management; and
- 97 [~~(vii)~~] (ix) trust law.

98 (c) The director shall be appointed as provided in this Subsection (3).

99 (d) The School and Institutional Trust Lands Board of Trustees nominating committee
100 shall submit to the State Board of Education the name of one person to serve as director.

101 (e) The State Board of Education may:

- 102 (i) appoint the person described in Subsection (3)(d) to serve as director; or
- 103 (ii) deny the appointment of the person described in Subsection (3)(d) to serve as
104 director.

105 (f) If the State Board of Education denies an appointment under this Subsection (3):

106 (i) the State Board of Education shall provide in writing one or more reasons for the
107 denial to the School and Institutional Trust Lands Board of Trustees nominating committee;
108 and

109 (ii) the School and Institutional Trust Lands Board of Trustees nominating committee
110 and the State Board of Education shall follow the procedures and requirements of this
111 Subsection (3) until the State Board of Education appoints a director.

112 [~~(4) The director shall report to the state superintendent or the state superintendent's
113 designee.~~]

114 (g) The State Board of Education may remove the director only by majority vote of a
115 quorum in an open and public meeting after proper notice and the inclusion of the removal item
116 on the agenda.

117 (4) The State Board of Education shall make rules regarding:

118 (a) regular reporting from the School Children's Trust Section director to the State
119 Board of Education, to allow the State Board of Education to fulfill its duties in representing
120 the trust beneficiaries; and

- 121 (b) the day-to-day reporting of the School Children's Trust Section director.
- 122 (5) (a) The director shall annually submit a proposed section budget to the State Board
- 123 of Education.
- 124 (b) After approving a section budget, the State Board of Education shall propose the
- 125 approved budget to the Legislature.
- 126 (6) The director is entitled to attend any presentation, discussion, meeting, or other
- 127 gathering concerning the trust, subject to:
- 128 (a) provisions of law prohibiting the director's attendance to preserve confidentiality; or
- 129 (b) other provisions of law that the director's attendance would violate.
- 130 [~~5~~] (7) The section shall have a staff.
- 131 [~~6~~] (8) The section shall protect current and future beneficiary rights and interests in
- 132 the trust consistent with the state's perpetual obligations under:
- 133 (a) the Utah Enabling Act;
- 134 (b) the Utah Constitution;
- 135 (c) state statute; and
- 136 (d) standard trust principles described in Section [53C-1-102](#).
- 137 [~~7~~] (9) The section shall promote:
- 138 (a) productive use of school and institutional trust lands[-]; and
- 139 (b) the efficient and prudent investment of funds managed by the School and
- 140 Institutional Trust Fund Office, created in Section [53D-1-201](#).
- 141 [~~8~~] (10) The section shall provide representation, advocacy, and input:
- 142 (a) on behalf of current and future beneficiaries of the trust, school community
- 143 councils, schools, and school districts;
- 144 (b) on federal, state, and local land decisions and policies that affect the trust; and
- 145 (c) to:
- 146 (i) the School and Institutional Trust Lands Administration;
- 147 (ii) the School and Institutional Trust Lands Board of Trustees;
- 148 (iii) the Legislature;
- 149 (iv) the state treasurer;
- 150 (v) the School and Institutional Trust Fund Office, created in Section [53D-1-201](#);
- 151 (vi) the School and Institutional Trust Fund Board of Trustees, created in Section

152 [53D-1-301](#);

153 ~~[(v)]~~ (vii) the attorney general;

154 ~~[(vi)]~~ (viii) the public; and

155 ~~[(vii)]~~ (ix) other entities as determined by the section.

156 ~~[(9)]~~ (11) The section shall provide independent oversight on the prudent and
157 profitable management of the trust and report annually to the State Board of Education and the
158 Legislature.

159 ~~[(10)]~~ (12) The section shall provide information requested by a person or entity
160 described in Subsections ~~[(8)]~~ (10)(c)(i) through ~~[(v)]~~ (vii).

161 Section 2. Section **53C-1-201** is amended to read:

162 **53C-1-201. Creation of administration -- Purpose -- Director -- Participation in**
163 **Risk Management Fund.**

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

166 (b) The administration shall manage all school and institutional trust lands and assets
167 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation
168 of Revenue from Trust Lands, and ~~[Sections 51-7a-201 and 51-7a-202]~~ Title 53D, Chapter 1,
169 School and Institutional Trust Fund Management Act.

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

172 (3) (a) It is subject to the usual legislative and executive department controls except as
173 provided in this Subsection (3).

174 (b) (i) The director may make rules as approved by the board that allow the
175 administration to classify a business proposal submitted to the administration as protected
176 under Section [63G-2-305](#), for as long as is necessary to evaluate the proposal.

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

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

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

183 (c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah
184 Administrative Rulemaking Act, except that the administration is not subject to Subsections
185 63G-3-301(6) and (7) and Section 63G-3-601, and the director, with the board's approval, may
186 establish a procedure for the expedited approval of rules, based on written findings by the
187 director showing:

- 188 (i) the changes in business opportunities affecting the assets of the trust;
- 189 (ii) the specific business opportunity arising out of those changes which may be lost
190 without the rule or changes to the rule;
- 191 (iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without
192 causing the loss of the specific opportunity;
- 193 (iv) approval by at least five board members; and
- 194 (v) that the director has filed a copy of the rule and a rule analysis, stating the specific
195 reasons and justifications for its findings, with the Division of Administrative Rules and
196 notified interested parties as provided in Subsection 63G-3-301(10).

197 (d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel
198 Management Act, except as provided in this Subsection (3)(d).

199 (ii) The board may approve, upon recommendation of the director, that exemption for
200 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable
201 the administration to efficiently fulfill its responsibilities under the law. The director shall
202 consult with the executive director of the Department of Human Resource Management prior
203 to making such a recommendation.

204 (iii) The positions of director, deputy director, associate director, assistant director,
205 legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs
206 officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

207 (iv) Salaries for exempted positions, except for the director, shall be set by the director,
208 after consultation with the executive director of the Department of Human Resource
209 Management, within ranges approved by the board. The board and director shall consider
210 salaries for similar positions in private enterprise and other public employment when setting
211 salary ranges.

212 (v) The board may create an annual incentive and bonus plan for the director and other
213 administration employees designated by the board, based upon the attainment of financial

214 performance goals and other measurable criteria defined and budgeted in advance by the board.

215 (e) The administration shall comply with Title 63G, Chapter 6a, Utah Procurement
216 Code, except where the board approves, upon recommendation of the director, exemption from
217 the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3,
218 Utah Administrative Rulemaking Act, for procurement, which enable the administration to
219 efficiently fulfill its responsibilities under the law.

220 (f) (i) Except as provided in Subsection (3)(f)(ii), the administration is not subject to
221 the fee agency requirements of Section 63J-1-504.

222 (ii) The following fees of the administration are subject to the requirements of Section
223 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change,
224 reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral
225 assignment, electronic payment, and processing.

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

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

230 (b) The board shall provide policies for the ownership and control of Native American
231 remains that are discovered or excavated on school and institutional trust lands in consultation
232 with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4,
233 Native American Grave Protection and Repatriation Act. The director may make rules in
234 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement
235 policies provided by the board regarding Native American remains.

236 (6) In connection with joint ventures and other transactions involving trust lands and
237 minerals approved under Sections 53C-1-303 and 53C-2-401, the administration, with board
238 approval, may become a member of a limited liability company under Title 48, Chapter 2c,
239 Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform
240 Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405 and is
241 considered a person under Section 48-2c-102 or Section 48-3a-102.

242 (7) Subject to the requirements of Subsection 63E-1-304(2), the administration may
243 participate in coverage under the Risk Management Fund created by Section 63A-4-201.

244 Section 3. Section 53C-1-203 is amended to read:

245 **53C-1-203. Board of trustees nominating committee -- Composition --**
246 **Responsibilities -- Per diem and expenses.**

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

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

250 (b) The governor shall appoint five members to the nominating committee on or before
251 the December 1 of the year preceding the vacancy on the nominating committee as follows:

252 (i) one individual from a nomination list of at least two names of individuals
253 knowledgeable about institutional trust lands submitted on or before the October 1 of the year
254 preceding the vacancy on the nominating committee by the University of Utah and Utah State
255 University on an alternating basis every four years;

256 (ii) one individual from a nomination list of at least two names submitted by the Utah
257 Farm Bureau in consultation with the Utah Cattleman's Association and the Utah Wool
258 Growers' Association on or before the October 1 of the year preceding the vacancy on the
259 nominating committee;

260 (iii) one individual from a nomination list of at least two names submitted by the Utah
261 Petroleum Association on or before the October 1 of the year preceding the vacancy on the
262 nominating committee;

263 (iv) one individual from a nomination list of at least two names submitted by the Utah
264 Mining Association on or before the October 1 of the year preceding the vacancy on the
265 nominating committee; and

266 (v) one individual from a nomination list of at least two names submitted by the
267 executive director of the Department of Natural Resources after consultation with statewide
268 wildlife and conservation organizations on or before the October 1 of the year preceding the
269 vacancy on the nominating committee.

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

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

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

276 governor shall, at the time of appointment or reappointment, adjust the length of terms to
277 ensure that the terms of committee members are staggered so that approximately half of the
278 committee is appointed every two years.

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

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

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

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

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

289 (a) Section 63A-3-106;

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

291 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
292 63A-3-107.

293 (7) The School Children's Trust Section, established in Section 53A-16-101.6, shall
294 provide staff support to the nominating committee.

295 Section 4. Section 53D-1-101 is enacted to read:

296 **TITLE 53D. SCHOOL AND INSTITUTIONAL TRUST FUND**

297 **CHAPTER 1. SCHOOL AND INSTITUTIONAL TRUST FUND MANAGEMENT ACT**

298 **Part 1. General Provisions**

299 **53D-1-101. Title.**

300 (1) This title is known as "School and Institutional Trust Fund."

301 (2) This chapter is known as the "School and Institutional Trust Fund Management
302 Act."

303 Section 5. Section 53D-1-102 is enacted to read:

304 **53D-1-102. Definitions.**

305 (1) "Account" means the School and Institutional Trust Fund Management Account,
306 created in Section 53D-1-203.

307 (2) "Beneficiaries":

308 (a) means those for whose benefit the trust fund is managed and preserved, consistent
309 with the enabling act, the Utah Constitution, and state law; and

310 (b) does not include other government institutions or agencies, the public at large, or
311 the general welfare of the state.

312 (3) "Board" means the board of trustees established in Section [53D-1-301](#).

313 (4) "Director" means the director of the office.

314 (5) "Enabling act" means the act of Congress, dated July 16, 1894, enabling the people
315 of Utah to form a constitution and state government and to be admitted into the Union.

316 (6) "Nominating committee" means the committee established under Section
317 [53D-1-501](#).

318 (7) "Office" means the School and Institutional Trust Fund Office, created in Section
319 [53D-1-201](#).

320 (8) "School children's trust section" means the School Children's Trust Section within
321 the State Office of Education, established in Section [53A-16-101.6](#).

322 (9) "Trust fund" means money derived from:

323 (a) the sale or use of land granted to the state under Sections 6, 8, and 12 of the
324 Enabling Act;

325 (b) proceeds referred to in Section 9 of the Enabling Act from the sale of public land;
326 and

327 (c) revenue and assets referred to in Utah Constitution, Article X, Section 5,
328 Subsections (1)(c), (e), and (f).

329 Section 6. Section **53D-1-103** is enacted to read:

330 **53D-1-103. Application of other law.**

331 (1) Except as provided in this section, a statutory provision applicable to a state
332 department, division, agency, or other entity does not apply to the office.

333 (2) The office, board, and nominating committee are subject to Title 52, Chapter 4,
334 Open and Public Meetings Act.

335 (3) Subject to Subsection [63E-1-304](#)(2), the office shall participate in coverage under
336 the Risk Management Fund, created in Section [63A-4-201](#).

337 (4) (a) Except as provided in Subsection (4)(b), the office and board are subject to Title

338 63G, Chapter 2, Government Records Access and Management Act.

339 (b) (i) As used in this Subsection (4)(b), "business proposal" means a proposal for
340 investing trust fund money or assets.

341 (ii) The director may, in accordance with Title 63G, Chapter 3, Utah Administrative
342 Rulemaking Act, make rules, subject to board approval, that allow the office to classify a
343 business proposal as protected under Section [63G-2-305](#) for as long as necessary for the office
344 to evaluate the proposal.

345 (iii) A person who is denied access to a business proposal because of its classification
346 as protected pursuant to a rule adopted under Subsection (4)(b)(ii) may not appeal that access
347 denial under Section [63G-2-403](#), subject to Subsection (4)(b)(iv).

348 (iv) Upon the office completing its evaluation of a business proposal:

349 (A) the business proposal becomes subject to classification and disclosure as provided
350 in Title 63G, Chapter 2, Government Records Access and Management Act, if the office's
351 evaluation results in a determination to accept the proposal; and

352 (B) if the office's evaluation results in a determination not to accept the business
353 proposal, the office shall return the business proposal to the person making the business
354 proposal, and the business proposal is not considered a record, as defined in Section
355 [63G-2-103](#), for purposes of Title 63G, Chapter 2, Government Records Access and
356 Management Act.

357 (5) (a) In making rules under this chapter, the director is subject to and shall comply
358 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except as provided in
359 Subsection (5)(b).

360 (b) (i) Subsections [63G-3-301](#)(6) and (7) and Section [63G-3-601](#) do not apply to the
361 director's making of rules under this chapter.

362 (ii) The director may, with the board's approval, establish an expedited rulemaking
363 process that allows the director to make rules in an expedited manner if:

364 (A) the director makes written findings of the circumstances that create the need to use
365 an expedited process to make rules in order to avoid losing an opportunity to participate in an
366 investment of assets of the trust fund that the director considers to be advantageous to the trust
367 fund; and

368 (B) the board approves the use of the expedited process.

369 (iii) If the director makes a rule using an expedited process under Subsection (5)(b)(ii),
370 the director shall:

371 (A) file with the Division of Administrative Rules, created in Section 63G-3-401, a
372 copy of the rule, a copy of the director's findings under Subsection (5)(b)(ii)(A), and an
373 analysis explaining the specific reasons and justifications for those findings; and

374 (B) notify interested parties of the rule, as provided in Subsection 63G-3-301(10).

375 (6) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies to a board
376 member to the same extent as it applies to an employee, as defined in Section 63G-7-102.

377 (7) (a) A board member, the director, and an office employee or agent are subject to:

378 (i) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; and

379 (ii) other requirements that the board establishes.

380 (b) In addition to any restrictions or requirements imposed under Subsection (7)(a), a
381 board member, the director, and an office employee or agent may not directly or indirectly
382 acquire an interest in the trust fund or receive any direct benefit from any transaction dealing
383 with trust fund money.

384 (8) (a) Except as provided in Subsection (8)(b), the office shall comply with Title 67,
385 Chapter 19, Utah State Personnel Management Act.

386 (b) (i) Upon a recommendation from the director after the director's consultation with
387 the executive director of the Department of Human Resource Management, the board may
388 provide that specified positions in the office are exempt from Section 67-19-12 and the career
389 service provisions of Title 67, Chapter 19, Utah State Personnel Management Act, as provided
390 in Subsection 67-19-15(1), if the board determines that exemption is required for the office to
391 fulfill efficiently its responsibilities under this chapter.

392 (ii) The director position is exempt from Section 67-19-12 and the career service
393 provisions of Title 67, Chapter 19, Utah State Personnel Management Act, as provided in
394 Subsection 67-19-15(1).

395 (iii) (A) After consultation with the executive director of the Department of Human
396 Resource Management, the director shall set salaries for positions that are exempted under
397 Subsection (8)(b)(i), within ranges that the board approves.

398 (B) In approving salary ranges for positions that are exempted under Subsection
399 (8)(b)(i), the board shall consider salaries for similar positions in private enterprise and other

400 public employment.

401 (9) The office is subject to legislative appropriation, to executive branch budgetary
402 review and recommendation, and to legislative and executive branch review.

403 Section 7. Section **53D-1-104** is enacted to read:

404 **53D-1-104. Attorney general representation.**

405 (1) The attorney general shall:

406 (a) represent the board, director, and office in any legal action relating to the trust fund;

407 (b) undertake suits for damages and any other necessary or appropriate relief in the
408 name of the trust fund and the state; and

409 (c) ensure that legal counsel assigned to provide legal counsel to the board, director,
410 and office is present at all board meetings.

411 (2) The attorney general may institute an action to enforce this chapter or to protect the
412 interests of beneficiaries.

413 Section 8. Section **53D-1-105** is enacted to read:

414 **53D-1-105. Annual audit by state auditor.**

415 (1) The state auditor shall conduct an annual audit of the trust fund money and assets
416 on a fund by fund basis, including:

417 (a) an evaluation of the independent custodial arrangements made for the management
418 and investment of trust fund money and assets; and

419 (b) a verification of the accuracy of the office's report of returns generated on the
420 office's investments.

421 (2) The state auditor shall:

422 (a) report the results of an audit under this section in writing; and

423 (b) make the written audit report available to the public.

424 (3) The state auditor shall consult with the board at least annually as to whether
425 additional matters should be included within the scope of the annual audit.

426 Section 9. Section **53D-1-201** is enacted to read:

427 **Part 2. School and Institutional Trust Fund Office**

428 **53D-1-201. School and Institutional Trust Fund Office -- Status -- Duties.**

429 (1) There is created within state government the School and Institutional Trust Fund
430 Office.

431 (2) The office is an independent state agency within the executive branch and is not a
432 division of any other executive branch department.

433 (3) The office shall manage the trust fund.

434 Section 10. Section **53D-1-202** is enacted to read:

435 **53D-1-202. Access to office records and personnel.**

436 (1) The office shall provide board members and the director of the school children's
437 trust section access to all office records and personnel as necessary for board members and the
438 director of the school children's trust section to fulfill their responsibilities to ensure that the
439 office is in full compliance with applicable law and policies.

440 (2) If the director requires, board members and the director of the school children's
441 trust section shall maintain confidentiality of information they obtain from office records and
442 personnel.

443 Section 11. Section **53D-1-203** is enacted to read:

444 **53D-1-203. Funding of office operations.**

445 (1) There is created an enterprise fund known as the School and Institutional Trust
446 Fund Management Account.

447 (2) The account is funded by money deposited into the account as provided in
448 Subsection (3).

449 (3) The director of school and institutional trust lands, appointed under Section
450 53C-1-301, shall annually deposit an amount of money into the account equal to the annual
451 appropriation made to the office by the Legislature.

452 (4) (a) If the amount of money deposited into the account under Subsection (3) in any
453 year exceeds the amount required by the office during that year to fund its operations, the office
454 shall distribute that excess money proportionately to the various funds established for the
455 beneficiaries of land grants under the enabling act, based on the balances of those funds as of
456 June 30.

457 (b) Upon request by the office, the director of school and institutional trust lands,
458 appointed under Section 53C-1-301, shall provide information to the office sufficient to enable
459 the office to determine the proportionate share to be distributed to each fund under Subsection
460 (4)(a).

461 Section 12. Section **53D-1-301** is enacted to read:

462 **Part 3. School and Institutional Trust Fund Board of Trustees**

463 **53D-1-301. Board of trustees -- Creation -- Membership.**

464 (1) There is created a School and Institutional Trust Fund Board of Trustees.

465 (2) The board consists of:

466 (a) the state treasurer; and

467 (b) four additional members who are:

468 (i) appointed by the state treasurer on a nonpartisan basis from a list of at least two
469 qualified candidates per position, nominated by the nominating committee, as provided in

470 Section 53D-1-503; and

471 (ii) confirmed by the Senate.

472 (3) The state treasurer shall appoint members under Subsection (2)(b) who possess:

473 (a) outstanding professional qualifications pertinent to the prudent investment of trust
474 fund money; and

475 (b) expertise in institutional investment management.

476 (4) (a) The term of a board member under Subsection (2)(b) is six years.

477 (b) Notwithstanding Subsection (4)(a), the nominating committee shall stagger terms
478 of initial board members so that the term of not more than one member expires in any year.

479 (c) A board member may not serve consecutive terms, except that:

480 (i) a board member whose term is less than six years because of the staggering of terms
481 under Subsection (4)(b) may serve a full consecutive term after the completion of the initial

482 term; and

483 (ii) a member appointed to fill a vacancy may serve a full consecutive term after filling
484 a previous unexpired term.

485 (d) A board member shall serve until a successor is appointed, confirmed, and
486 qualified.

487 (5) Before assuming duties as a board member, a member shall take an oath of office
488 that includes the following:

489 "I solemnly swear to carry out my duties as a member of the School and Institutional
490 Trust Fund Board of Trustees and to act with undivided loyalty to the beneficiaries of the trust
491 fund that the board oversees, to the best of my abilities and consistent with the law."

492 (6) The state treasurer may remove a board member for cause, subject to the

493 affirmative vote of two-thirds of all members of the Senate.

494 (7) The state treasurer shall fill a vacancy in the same manner as the initial appointment
495 under Subsection (2)(b)(i).

496 (8) A board member may not receive any compensation or benefits for the member's
497 service, but the member may receive per diem and travel expenses in accordance with:

498 (a) Section [63A-3-106](#);

499 (b) Section [63A-3-107](#); and

500 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
501 [63A-3-107](#).

502 Section 13. Section **53D-1-302** is enacted to read:

503 **53D-1-302. Board chair and vice chair -- Quorum.**

504 (1) (a) The state treasurer is the chair of the board.

505 (b) The chair shall faithfully represent the will of the board.

506 (2) (a) The board shall annually select a vice chair from its membership.

507 (b) The vice chair shall act as chair in the absence of the chair.

508 (3) (a) Three members of the board constitute a quorum for the purpose of holding a
509 meeting.

510 (b) Unless otherwise specified in this title, an action of the board requires the
511 affirmative vote of at least three members.

512 Section 14. Section **53D-1-303** is enacted to read:

513 **53D-1-303. Board authority and duties.**

514 (1) The board has broad policymaking authority over the office and the trust fund.

515 (2) (a) The board shall establish policies for the management of:

516 (i) the office, including:

517 (A) an investment management code of conduct and associated compliance policy;

518 (B) a policy for the strategic allocation of trust fund assets;

519 (C) a soft dollar policy; and

520 (D) a policy articulating the board's investment philosophy for trust fund assets; and

521 (ii) the trust fund.

522 (b) Policies that the board adopts shall:

523 (i) be consistent with the enabling act, the Utah Constitution, and other applicable state

524 law;
525 (ii) reflect undivided loyalty to the beneficiaries consistent with fiduciary duties;
526 (iii) be designed to prudently optimize trust fund returns and increase the value of the
527 trust fund, consistent with the balancing of short-term and long-term interests, so that the
528 fiduciary duty of intergenerational equity is met;
529 (iv) be designed to maintain the integrity of the trust fund and prevent the
530 misapplication of money in the trust fund;
531 (v) enable the board to oversee the activities of the office; and
532 (vi) otherwise be in accordance with standard trust principles as provided by state law.
533 (3) The board shall:
534 (a) establish a conflict of interest policy for the office and board members;
535 (b) establish policies governing the evaluation, selection, and monitoring of
536 independent custodial arrangements;
537 (c) ensure that the office is managed according to law;
538 (d) establish bylaws to govern the board;
539 (e) establish the compensation of the director;
540 (f) annually examine the compensation and performance of the director as part of the
541 board's budget review process;
542 (g) annually report the director's compensation to the Legislature; and
543 (h) adopt policies to provide for annual training of board members regarding their
544 duties and responsibilities.
545 (4) The board may:
546 (a) establish one or more advisory committees to advise the board, director, or office
547 on policies affecting the management of the trust fund;
548 (b) after conferring with the director:
549 (i) hire one or more consultants to advise the board, director, or office on issues
550 affecting the management of the trust fund; and
551 (ii) pay compensation to any consultant hired under Subsection (4)(b)(i), subject to
552 budgetary constraints;
553 (c) submit to the director a written question or set of questions concerning policies and
554 practices affecting the management of the trust fund;

555 (d) notwithstanding any other provision of this chapter or other state law, employ
556 independent legal counsel to represent and protect the interests of the trust fund and the
557 beneficiaries; and

558 (e) pay members per diem and travel expenses.

559 Section 15. Section **53D-1-304** is enacted to read:

560 **53D-1-304. Board meetings.**

561 (1) In cooperation with the director, the board shall hold at least nine meetings per year
562 to conduct business.

563 (2) The board chair, the director, or two board members:

564 (a) may call a board meeting; and

565 (b) if calling a board meeting, shall provide as much advance notice as is reasonable
566 under the circumstances to all board members, the director, and the director of the school
567 children's trust section.

568 (3) Any board member may place an item on a board meeting agenda.

569 (4) The board shall annually adopt a set of parliamentary procedures to govern board
570 meetings.

571 (5) The board may establish an attendance policy to govern the attendance of board
572 members at board meetings.

573 Section 16. Section **53D-1-401** is enacted to read:

574 **Part 4. Director**

575 **53D-1-401. Appointment of director -- Qualifications -- Nature of employment --**
576 **Removal by State Board of Education petition.**

577 (1) The office shall be managed by a director.

578 (2) On or before January 25, 2015, the board shall appoint an individual as director.

579 (3) The board shall ensure that an individual appointed as director possesses:

580 (a) outstanding professional qualifications pertinent to the prudent investment of trust
581 fund money; and

582 (b) expertise in institutional investment management.

583 (4) The director is an at-will employee who may be removed by the board at any time
584 with or without cause.

585 (5) (a) The State Board of Education may submit a written petition to the board

586 requesting the board to remove the director for cause, explained in the petition.

587 (b) The board shall hold a hearing on a petition under Subsection (5)(a) within 45 days
588 after receiving the petition.

589 (c) If, after holding a hearing, the board finds by a preponderance of the evidence that
590 there is cause for removing the director, the board shall remove the director.

591 Section 17. Section **53D-1-402** is enacted to read:

592 **53D-1-402. Director duties and responsibilities.**

593 (1) The director has broad authority to manage the office to fulfill its purposes,
594 consistent with the enabling act, the Utah Constitution, state law, and board policies.

595 (2) The director shall:

596 (a) before assuming the duties of director, take an oath that includes the following:

597 "I solemnly swear to carry out my duties as director of the School and Institutional
598 Trust Fund Office with undivided loyalty to the beneficiaries of the trust fund managed by the
599 office, to the best of my abilities and consistent with the law.";

600 (b) carry out the policies of the board;

601 (c) act with undivided loyalty to those entitled to the benefit of income from the trust
602 fund, consistent with the director's fiduciary duties and responsibilities;

603 (d) follow the prudent investor rule, prudently seeking to obtain the optimum return
604 from the investment of trust fund money and assets, balancing short-term and long-term
605 interests under the principle of intergenerational equity;

606 (e) exercise full discretionary authority to manage, maintain, transfer, or sell assets of
607 the trust fund in the manner that the director determines to be most favorable to beneficiaries;

608 (f) maintain the integrity of the trust fund and prevent, through prudent management,
609 the misapplication of trust fund money;

610 (g) adopt rules, as provided in Subsection [53D-1-103\(3\)](#), that are necessary for the
611 proper exercise of the director's duties under this chapter and policies established by the board;

612 (h) faithfully manage the office under policies established by the board;

613 (i) annually submit to the board:

614 (i) an office budget; and

615 (ii) a financial plan for operations of the office;

616 (j) after board approval of the office budget, submit the budget to the governor and the

617 Legislature;

618 (k) direct and control budget expenditures;

619 (l) establish job descriptions and, within budgetary constraints, employ staff necessary
620 to accomplish the purposes of the office;

621 (m) in accordance with generally accepted principles of fund accounting, establish a
622 system to identify and account for the trust fund assets;

623 (n) notify the director of the school children's trust section of major items that the
624 director knows may be useful to the director of the school children's trust section in protecting
625 the rights of beneficiaries;

626 (o) maintain appropriate records of trust fund activities to enable auditors to conduct
627 periodic audits;

628 (p) respond in writing within a reasonable time to a request by the director of the
629 school children's trust section for information on policies and practices affecting the
630 management of the trust fund; and

631 (q) respond to a question that the board submits under Subsection [53D-1-303\(4\)\(c\)](#)
632 within a reasonable time after receiving the question.

633 (3) The director may:

634 (a) sue or be sued as the director of the trust fund; and

635 (b) contract with other public agencies for personnel management services.

636 Section 18. Section **53D-1-403** is enacted to read:

637 **53D-1-403. Reports.**

638 (1) At least annually, the director shall report in person to the Legislative Management
639 Committee, the governor, and the State Board of Education, concerning the office's
640 investments, performance, estimated distributions, and other activities.

641 (2) The director shall report to the board concerning the work of the director and the
642 investment activities and other activities of the office:

643 (a) in a public meeting at least nine times per year; and

644 (b) as otherwise requested by the board.

645 (3) (a) Before November 1 of each year, the director shall:

646 (i) submit a written report to each school community council, created under Section
647 [53A-1a-108](#), concerning the office's investments, performance, estimated distributions, and

648 other activities; and

649 (ii) post the written report described in Subsection (3)(a)(i) on the office's website.

650 (b) A report under Subsection (3)(a) shall be prepared in simple language designed to
651 be understood by the general public.

652 (4) The director shall provide to the board:

653 (a) monthly written reports on the activities of the office;

654 (b) quarterly financial reports; and

655 (c) any other report requested by the board.

656 (5) The director shall:

657 (a) invite the director of the school children's trust section to attend any meeting at
658 which the director gives a report under this section; and

659 (b) provide the director of the school children's trust section:

660 (i) a copy of any written report prepared under this section; and

661 (ii) any other report requested by the director of the school children's trust section.

662 Section 19. Section **53D-1-501** is enacted to read:

663 **Part 5. Nominating Committee**

664 **53D-1-501. Nominating committee -- Membership -- Terms -- Vacancies --**

665 **Compensation.**

666 (1) There is established a School and Institutional Trust Fund Nominating Committee.

667 (2) The nominating committee consists of:

668 (a) two members appointed by the State Board of Education;

669 (b) two members appointed by the board of the CFA Society of Salt Lake;

670 (c) the chief investment officer of the University of Utah endowment;

671 (d) the chief investment officer of the Utah State University endowment; and

672 (e) the director of the school children's trust section.

673 (3) An individual appointed as a member of the nominating committee under

674 Subsections (2)(a) or (b) shall be appointed based on the individual's expertise in:

675 (a) investment finance;

676 (b) institutional asset management;

677 (c) trust administration; or

678 (d) the practice of law in the areas of capital markets, securities law, trusts,

679 foundations, endowments, investment finance, institutional asset management, or trust
680 administration.

681 (4) The term of a member appointed under Subsection (2)(a) or (b) is four years, except
682 that the initial term of members appointed under Subsection (2)(b) is two years.

683 (5) A nominating committee member shall serve until a successor is appointed and
684 qualified.

685 (6) (a) If a member appointed under Subsection (2)(a) or (b) leaves office, the vacancy
686 shall be filled in the same manner as the initial appointment under Subsection (2)(a) or (b).

687 (b) An individual appointed to fill a vacancy under Subsection (6)(a) serves the
688 remainder of the unexpired term.

689 (7) A member of the nominating committee may not receive compensation or benefits
690 for the member's service, but may receive per diem and travel expenses in accordance with:

691 (a) Section [63A-3-106](#);

692 (b) Section [63A-3-107](#); and

693 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
694 [63A-3-107](#).

695 Section 20. Section **53D-1-502** is enacted to read:

696 **53D-1-502. Chair and vice chair -- Quorum and voting requirements -- Bylaws --**
697 **Staff.**

698 (1) The nominating committee shall select a chair and vice chair from its members.

699 (2) (a) Three members of the nominating committee constitute a quorum.

700 (b) An action of the nominating committee requires the affirmative vote of at least
701 three members.

702 (3) The nominating committee shall establish bylaws to govern the nominating
703 committee.

704 (4) The school children's trust section shall provide staff support to the nominating
705 committee.

706 Section 21. Section **53D-1-503** is enacted to read:

707 **53D-1-503. Nominating process -- Replacement list of candidates -- Interim**
708 **appointment.**

709 (1) The nominating committee shall nominate at least two candidates for each position

710 or vacancy on the board.

711 (2) The nominating committee shall:

712 (a) nominate candidates who meet the criteria stated in Subsection 53D-1-301(3); and

713 (b) consider the character and reputation of candidates the nominating committee

714 nominates.

715 (3) If the state treasurer considers the candidates nominated under Subsection (1) to be

716 unacceptable, the state treasurer may request the nominating committee to nominate at least

717 two other candidates per appointment.

718 Section 22. Section **53D-1-601** is enacted to read:

719 **Part 6. Management and Investment Standards and Principles**

720 **53D-1-601. General management and investment principles -- Duty of person with**
721 **special skills or expertise.**

722 (1) Board members, the director, and office staff shall act in the best interests of the
723 beneficiaries and comply with the duty of undivided loyalty to the beneficiaries.

724 (2) A person who manages and invests trust fund money or assets shall:

725 (a) manage and invest in good faith and with the care a prudent professional in a like
726 position would exercise under similar circumstances;

727 (b) consider, as relevant:

728 (i) general economic conditions;

729 (ii) the possible effect of inflation or deflation;

730 (iii) any expected tax consequences of investment decisions or strategies;

731 (iv) the role that each investment or course of action plays within the overall

732 investment portfolio of the trust fund;

733 (v) the expected net return from income and the appreciation of investments;

734 (vi) the expected returns and risk characteristics of individual assets;

735 (vii) the needs of the beneficiaries to receive distributions and to preserve capital;

736 (viii) liquidity;

737 (ix) asset allocation; and

738 (x) costs and management fees; and

739 (c) make management and investment decisions about an individual asset not in

740 isolation but in the context of the trust fund's portfolio of investments as a whole and as part of

741 an overall investment strategy, having risk and return objectives reasonably suited to the trust
742 fund and to the beneficiaries.

743 (3) A person who has special skills or expertise, or who is selected to assist in
744 managing and investing the trust fund money or assets based on the person's representation of
745 having special skills or expertise, has a duty to use those skills and that expertise in managing
746 and investing trust fund money and assets.

747 Section 23. Section **53D-1-602** is enacted to read:

748 **53D-1-602. Office authority, responsibilities, and duties.**

749 (1) In managing and investing trust fund money and assets, the office:

750 (a) may incur only costs that are appropriate and reasonable in relation to the assets, the
751 purposes of the trust fund, and the skills available to the office; and

752 (b) shall make a reasonable effort to verify facts related to the management and
753 investment of trust fund money and assets.

754 (2) Except as otherwise provided by law, the office may invest in any kind of property
755 or any type of investment that is:

756 (a) consistent with this part; and

757 (b) in the best interests of the beneficiaries.

758 (3) The office shall diversify the investments of trust fund money and assets.

759 (4) Within a reasonable time after receiving a contribution to the trust fund, the office
760 shall make and carry out decisions concerning the retention or disposition of the contribution or
761 to rebalance the trust fund portfolio, in order to bring the trust fund into compliance with the
762 purposes, terms, and distribution requirements of trust fund money and assets.

763 (5) The office may delegate any management or investment function to the director, a
764 committee of board members, or an employee of the office.

765 Section 24. Section **53D-1-603** is enacted to read:

766 **53D-1-603. Director authority, responsibilities, and duties.**

767 (1) (a) The director may delegate to an external agent the management of a portion of
768 the trust fund money or assets, if the delegation is prudent under the circumstances and
769 consistent with the purposes of the trust fund.

770 (b) The director shall periodically review the actions of an agent under Subsection

771 (1)(a) in order to monitor the agent's performance and compliance with the scope and terms of

772 the delegation.

773 (2) The director shall act in good faith, with the care that a prudent professional in a
774 like position would exercise under similar circumstances, in:

775 (a) selecting an agent;

776 (b) establishing the scope and terms of a delegation under Subsection (1); and

777 (c) periodically reviewing the agent's actions, as provided in Subsection (1)(b).

778 (3) In performing a delegated function, an agent owes a duty to the state and the
779 beneficiaries to exercise reasonable care to comply with the scope and terms of the delegation.

780 (4) By accepting a delegation of a management or investment function relating to trust
781 fund money or assets, an agent submits to the jurisdiction of the courts of the state in all
782 proceedings arising from or related to the delegation or the performance of the delegated
783 function.

784 Section 25. Section **53D-1-604** is enacted to read:

785 **53D-1-604. Compliance not determined by hindsight.**

786 Compliance with a provision of this part in making a decision or taking an action is
787 determined in light of the facts and circumstances existing at the time a decision is made or an
788 action is taken and not by hindsight.

789 Section 26. Section **53D-1-701** is enacted to read:

790 **Part 7. Review of Decisions or Actions**

791 **53D-1-701. Petition for review of director or office decision or action -- Hearing**
792 **examiner -- Decision -- Judicial review.**

793 (1) (a) Subject to Subsection (1)(b), a person aggrieved by a decision or action of the
794 director or office may, in accordance with rules adopted by the board under Section [53D-1-702](#),
795 petition the board for an administrative review of the decision or action.

796 (b) A person may not petition for review of:

797 (i) a decision whether to buy, sell, hold, or exchange a specific investment; or

798 (ii) an action to buy, sell, hold, or exchange a specific investment.

799 (2) (a) The board may appoint a qualified hearing examiner to take evidence and make
800 a recommendation for board action on the petition.

801 (b) If the board appoints a hearing examiner under Subsection (2)(a), the board shall, in
802 conducting its review and making its decision on the petition, consider the hearing examiner's

803 recommendation.

804 (3) In making its decision on the petition, the board shall:

805 (a) make findings and conclusions and base its decision on the findings and
806 conclusions;

807 (b) uphold the decision or action of the director or office unless the board finds, by a
808 preponderance of the evidence, that the decision or action violated applicable law, policy, or
809 rule; and

810 (c) inform the person who filed the petition of the person's right to judicial review of
811 the board's decision.

812 (4) A person aggrieved by a final decision of the board on a petition filed under this
813 section may seek judicial review of that decision as provided in Sections [63G-4-402](#) and
814 [63G-4-403](#).

815 Section 27. Section **53D-1-702** is enacted to read:

816 **53D-1-702. Board rules on petition for review of director or office decision or**
817 **action.**

818 (1) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah
819 Administrative Rulemaking Act, to govern proceedings on a petition under Section [53D-1-701](#).

820 (2) Rules under Subsection (1) shall ensure procedural due process in proceedings
821 relating to a petition under Section [53D-1-701](#).

822 Section 28. **Repealer.**

823 This bill repeals:

824 Section **[51-7a-101](#)**, **Title.**

825 Section **[51-7a-102](#)**, **Definitions.**

826 Section **[51-7a-201](#)**, **Investment of land grant trust funds.**

827 Section **[51-7a-202](#)**, **State treasurer to follow "prudent investor" rule -- Standard of**
828 **care.**

829 Section **[51-7a-301](#)**, **Investment advisory committee -- Creation.**

830 Section **[51-7a-302](#)**, **Investment advisory committee -- Duties.**

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