

**Effective 7/1/2018**

**Title 53D. School and Institutional Trust Fund Management  
and Land Trusts Protection and Advocacy Office**

**Chapter 1  
School and Institutional Trust Fund Management Act**

**Part 1  
General Provisions**

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

- (1) This title is known as "School and Institutional Trust Fund Management and Land Trusts Protection and Advocacy Office."
- (2) This chapter is known as the "School and Institutional Trust Fund Management Act."

Amended by Chapter 448, 2018 General Session

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

As used in this chapter:

- (1) "Account" means the School and Institutional Trust Fund Management Account, created in Section 53D-1-203.
- (2) "Advocacy office director" means the director of the Land Trusts Protection and Advocacy Office, appointed under Section 53D-2-203.
- (3) "Beneficiaries":
  - (a) means those for whose benefit the trust fund is managed and preserved, consistent with the enabling act, the Utah Constitution, and state law; and
  - (b) does not include other government institutions or agencies, the public at large, or the general welfare of the state.
- (4) "Board" means the board of trustees established in Section 53D-1-301.
- (5) "Director" means the director of the office.
- (6) "Enabling act" means the act of Congress, dated July 16, 1894, enabling the people of Utah to form a constitution and state government and to be admitted into the Union.
- (7) "Land Trusts Protection and Advocacy Office" or "advocacy office" means the Land Trusts Protection and Advocacy Office created in Section 53D-2-201.
- (8) "Nominating committee" means the committee established under Section 53D-1-501.
- (9) "Office" means the School and Institutional Trust Fund Office, created in Section 53D-1-201.
- (10) "Trust fund" means money derived from:
  - (a) the sale or use of land granted to the state under Sections 6, 8, and 12 of the enabling act;
  - (b) proceeds referred to in Section 9 of the enabling act from the sale of public land; and
  - (c) revenue and assets referred to in Utah Constitution, Article X, Section 5, Subsections (1)(c), (e), and (f).

Amended by Chapter 136, 2019 General Session

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

- (1) The office, board, and nominating committee are subject to:
  - (a) Title 52, Chapter 4, Open and Public Meetings Act; and

- (b) Section 67-3-12.
- (2) Subject to Subsection 63E-1-304(2), the office may participate in coverage under the Risk Management Fund, created in Section 63A-4-201.
- (3) The office and board are subject to:
  - (a) Title 63G, Chapter 2, Government Records Access and Management Act, except for records relating to investment activities; and
  - (b) Title 63G, Chapter 6a, Utah Procurement Code.
- (4)
  - (a) In making rules under this chapter, the director is subject to and shall comply with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except as provided in Subsection (4)(b).
  - (b) Subsections 63G-3-301(6) and (7) and Section 63G-3-601 do not apply to the director's making of rules under this chapter.
- (5) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies to a board member to the same extent as it applies to an employee, as defined in Section 63G-7-102.
- (6)
  - (a) A board member, the director, and an office employee or agent are subject to:
    - (i) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; and
    - (ii) other requirements that the board establishes.
  - (b) In addition to any restrictions or requirements imposed under Subsection (6)(a), a board member, the director, and an office employee or agent may not directly or indirectly acquire an interest in the trust fund or receive any direct benefit from any transaction dealing with trust fund money.
- (7)
  - (a) Except as provided in Subsection (7)(b), the office shall comply with Title 63A, Chapter 17, Utah State Personnel Management Act.
  - (b)
    - (i) Upon a recommendation from the director after the director's consultation with the director of the Division of Human Resource Management, the board may provide that specified positions in the office are exempt from Section 63A-17-307 and the career service provisions of Title 63A, Chapter 17, Utah State Personnel Management Act, as provided in Subsection 63A-17-301(1), if the board determines that exemption is required for the office to fulfill efficiently its responsibilities under this chapter.
    - (ii) The director position is exempt from Section 63A-17-307 and the career service provisions of Title 63A, Chapter 17, Utah State Personnel Management Act, as provided in Subsection 63A-17-301(1).
    - (iii)
      - (A) After consultation with the director of the Division of Human Resource Management, the director shall set salaries for positions that are exempted under Subsection (7)(b)(i), within ranges that the board approves.
      - (B) In approving salary ranges for positions that are exempted under Subsection (7)(b)(i), the board shall consider salaries for similar positions in private enterprise and other public employment.
- (8) The office is subject to legislative appropriation, to executive branch budgetary review and recommendation, and to legislative and executive branch review.

Amended by Chapter 84, 2021 General Session  
Amended by Chapter 344, 2021 General Session

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

- (1) The attorney general shall:
  - (a) represent the board, director, and office in any legal action relating to the trust fund;
  - (b) undertake suits for damages and any other necessary or appropriate relief in the name of the trust fund and the state; and
  - (c) ensure that legal counsel assigned to provide legal counsel to the board, director, and office is present at board meetings as needed.
- (2) The attorney general may institute an action to enforce this chapter or to protect the interests of beneficiaries.

Amended by Chapter 179, 2017 General Session

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

- (1) The state auditor shall conduct an annual audit of the trust fund money and assets on a fund by fund basis, including:
  - (a) an evaluation of the independent custodial arrangements made for the management and investment of trust fund money and assets; and
  - (b) a verification of the accuracy of the office's report of returns generated on the office's investments.
- (2) The state auditor shall:
  - (a) report the results of an audit under this section in writing; and
  - (b) make the written audit report available to the public.
- (3) The state auditor shall consult with the board at least annually as to whether additional matters should be included within the scope of the annual audit.

Enacted by Chapter 426, 2014 General Session

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

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

- (1) There is created within state government the School and Institutional Trust Fund Office.
- (2) The office is an independent state agency within the executive branch and is not a division of any other executive branch department.
- (3) The office shall manage the trust fund.
- (4) No later than September 1 of each year, the office shall provide to the Division of Finance financial information for the prior fiscal year that the Division of Finance requests for financial reporting purposes.

Enacted by Chapter 426, 2014 General Session

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

- (1) The office shall provide board members and the advocacy office director access to all office records and personnel as necessary for board members and the advocacy office director to fulfill their responsibilities to ensure that the office is in full compliance with applicable law and policies.

- (2) If the director requires, board members and the advocacy office director shall maintain confidentiality of information they obtain from office records and personnel.

Amended by Chapter 448, 2018 General Session

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

- (1) As used in this section, "trust fund earnings" includes any of the following that is in excess of the trust fund corpus:
  - (a) realized or unrealized gains;
  - (b) interest;
  - (c) dividends;
  - (d) other income; or
  - (e) other sources of revenue.
- (2) There is created an enterprise fund known as the School and Institutional Trust Fund Management Account.
- (3) The account is funded by money deposited into the account as provided in Subsection (4).
- (4) Except as provided in Subsection (5)(b), the director shall deposit into the account an amount of money from the trust fund earnings equal to the annual appropriation that the Legislature makes to the office, to pay for the office's operating costs.
- (5)
  - (a) The office may use money in the account to pay for the office's operating costs.
  - (b) If the amount of money deposited into the account under Subsection (4) in any fiscal year exceeds the amount required by the office during that fiscal year to fund the office's operations, the office shall, in the following fiscal year, reduce the amount deposited into the account under Subsection (4) by the amount of the unspent appropriation.
- (6)
  - (a) The office may deduct from trust fund earnings:
    - (i) the cost for any audit, risk management, consulting, equipment, legal services, software, research, or custodial services; or
    - (ii) manager fees incurred in managing the trust fund assets.
  - (b) The costs and fees described in Subsection (6)(a) are separate from and in addition to the office's operating costs that are paid from the account.

Amended by Chapter 191, 2019 General Session

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

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

- (1) There is created a School and Institutional Trust Fund Board of Trustees.
- (2) The board consists of:
  - (a) the state treasurer; and
  - (b) four additional members who are appointed by the state treasurer on a nonpartisan basis from a list of at least two qualified candidates per position, nominated by the nominating committee, as provided in Section 53D-1-503.
- (3) The state treasurer shall appoint members under Subsection (2)(b) who possess:

- (a) outstanding professional qualifications pertinent to the prudent investment of trust fund money; and
  - (b) expertise in institutional investment management.
- (4)
- (a) The term of a board member under Subsection (2)(b) is six years.
  - (b) Notwithstanding Subsection (4)(a), the nominating committee shall stagger terms of initial board members so that the term of not more than one member expires in any year.
  - (c) A board member may not serve consecutive terms, except that:
    - (i) a board member whose term is less than six years because of the staggering of terms under Subsection (4)(b) may serve a full consecutive term after the completion of the initial term; and
    - (ii) a member appointed to fill a vacancy may serve a full consecutive term after filling a previous unexpired term.
  - (d) A board member shall serve until a successor is appointed, confirmed, and qualified.
- (5) Before assuming duties as a board member, a member shall take an oath of office that includes the following:
- "I solemnly swear to carry out my duties as a member of the School and Institutional Trust Fund Board of Trustees and to act with undivided loyalty to the beneficiaries of the trust fund that the board oversees, to the best of my abilities and consistent with the law."
- (6) The state treasurer may remove a board member for cause, subject to the affirmative vote of at least two other board members, besides the state treasurer.
- (7) The state treasurer shall fill a vacancy in the same manner as the initial appointment under Subsection (2)(b).
- (8) A board member may not receive any compensation or benefits for the member's service, but the member 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 63A-3-107.

Amended by Chapter 258, 2015 General Session

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

- (1)
- (a) The state treasurer is the chair of the board.
  - (b) The chair shall faithfully represent the will of the board to the extent the board's will is consistent with state law.
- (2)
- (a) The board shall annually select a vice chair from its membership.
  - (b) The vice chair shall act as chair in the absence of the chair.
- (3)
- (a) Three members of the board constitute a quorum for the purpose of holding a meeting.
  - (b) Unless otherwise specified in this title, an action of the board requires the affirmative vote of at least three members.

Enacted by Chapter 426, 2014 General Session

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

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

- (2)
  - (a) The board shall establish policies for the management of:
    - (i) the office, including:
      - (A) an investment management code of conduct and associated compliance policy;
      - (B) a policy for the strategic allocation of trust fund assets;
      - (C) a soft dollar policy; and
      - (D) a policy articulating the board's investment philosophy for trust fund assets; and
    - (ii) the trust fund.
  - (b) Policies that the board adopts shall:
    - (i) be consistent with the enabling act, the Utah Constitution, and other applicable state law;
    - (ii) reflect undivided loyalty to the beneficiaries consistent with fiduciary duties;
    - (iii) be designed to prudently optimize trust fund returns and increase the value of the trust fund, consistent with the balancing of short-term and long-term interests, so that the fiduciary duty of intergenerational equity is met;
    - (iv) be designed to maintain the integrity of the trust fund and prevent the misapplication of money in the trust fund;
    - (v) enable the board to oversee the activities of the office; and
    - (vi) otherwise be in accordance with standard trust principles as provided by state law.
- (3) The board shall:
  - (a) establish a conflict of interest policy for the office and board members;
  - (b) establish policies governing the evaluation, selection, and monitoring of independent custodial arrangements;
  - (c) ensure that the office is managed according to law;
  - (d) establish bylaws to govern the board;
  - (e) establish the compensation of the director;
  - (f) annually examine the compensation and performance of the director as part of the board's budget review process;
  - (g) annually report the director's compensation to the Legislature; and
  - (h)
    - (i) adopt policies to provide for annual training of board members regarding their duties and responsibilities; and
    - (ii) ensure that any training described in Subsection (3)(h)(i) complies with Title 63G, Chapter 22, State Training and Certification Requirements.
- (4) The board may:
  - (a) after conferring with the director:
    - (i) hire one or more consultants to advise the board, director, or office on issues affecting the management of the trust fund; and
    - (ii) pay compensation to any consultant hired under Subsection (4)(a)(i), subject to budgetary constraints; and
  - (b) submit to the director a written question or set of questions concerning policies and practices affecting the management of the trust fund.

Amended by Chapter 200, 2018 General Session

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

- (1) The board shall hold at least four meetings per year to conduct business.
- (2) The board chair or two board members:
  - (a) may call a board meeting; and

- (b) if calling a board meeting, shall provide as much advance notice as is reasonable under the circumstances to all board members, the director, and the advocacy office director.
- (3) Any board member may place an item on a board meeting agenda.
- (4) The board shall adopt a set of parliamentary procedures to govern board meetings.
- (5) The board may establish an attendance policy to govern the attendance of board members at board meetings.
- (6)
  - (a) Notwithstanding Subsection 52-4-204(2) or 52-4-205(1), and in addition to the reasons to close a meeting described in Section 52-4-205, the board may hold a closed meeting to discuss the sale or purchase of identifiable securities, investment funds, or investment contracts if:
    - (i) the board, the director, or the office has entered into a confidentiality agreement related to the identifiable securities, investment funds, or investment contracts; and
    - (ii) two-thirds of the members present when a quorum is present vote to close the meeting for the purpose described in this Subsection (6)(a).
  - (b) If the board closes a meeting in accordance with Subsection (6)(a), the board shall comply with the requirements for closed meetings described in Title 52, Chapter 4, Open and Public Meetings Act.

Amended by Chapter 336, 2021 General Session

## **Part 4 Director**

### **53D-1-401 Appointment of director -- Qualifications -- Nature of employment -- Removal by petition.**

- (1) The office shall be managed by a director.
- (2) If there is a vacancy in the director position, the board shall appoint an individual as director.
- (3) The board shall ensure that an individual appointed as director possesses:
  - (a) outstanding professional qualifications pertinent to the prudent investment of trust fund money; and
  - (b) expertise in institutional investment management.
- (4) The director is an at-will employee who may be removed by the board at any time with or without cause.
- (5)
  - (a) The advocacy office director may submit a written petition to the board requesting the board to remove the director for cause, explained in the petition.
  - (b) The board shall hold a hearing on a petition under Subsection (5)(a) within 45 days after receiving the petition.
  - (c) If, after holding a hearing, the board finds by a preponderance of the evidence that there is cause for removing the director, the board shall remove the director.

Amended by Chapter 448, 2018 General Session

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

- (1) The director has broad authority to manage the office to fulfill its purposes, consistent with the enabling act, the Utah Constitution, state law, and board policies.
- (2) The director shall:
  - (a) before assuming the duties of director, take an oath that includes the following:

"I solemnly swear to carry out my duties as director of the School and Institutional Trust Fund Office with undivided loyalty to the beneficiaries of the trust fund managed by the office, to the best of my abilities and consistent with the law.";
  - (b) carry out the policies of the board;
  - (c) act with undivided loyalty to those entitled to the benefit of income from the trust fund, consistent with the director's fiduciary duties and responsibilities;
  - (d) follow the prudent investor rule, prudently seeking to obtain the optimum return from the investment of trust fund money and assets, balancing short-term and long-term interests under the principle of intergenerational equity;
  - (e) exercise full discretionary authority to manage, maintain, transfer, or sell assets of the trust fund in the manner that the director determines to be most favorable to beneficiaries;
  - (f) maintain the integrity of the trust fund and prevent, through prudent management, the misapplication of trust fund money;
  - (g) adopt rules, as provided in Subsection 53D-1-103(4), that are necessary for the proper exercise of the director's duties under this chapter and policies established by the board;
  - (h) faithfully manage the office under policies established by the board;
  - (i) annually submit to the board:
    - (i) an office budget; and
    - (ii) a financial plan for operations of the office;
  - (j) after board approval of the office budget, submit the budget to the governor and the Legislature;
  - (k) direct and control budget expenditures;
  - (l) establish job descriptions and, within budgetary constraints, employ staff necessary to accomplish the purposes of the office;
  - (m) in accordance with generally accepted principles of fund accounting, establish a system to identify and account for the trust fund assets;
  - (n) notify the advocacy office director of major items that the director knows may be useful to the advocacy office director in protecting the rights of beneficiaries;
  - (o) maintain appropriate records of trust fund activities to enable auditors to conduct periodic audits;
  - (p) respond in writing within a reasonable time to a request by the advocacy office director for information on policies and practices affecting the management of the trust fund; and
  - (q) respond to a question that the board submits under Subsection 53D-1-303(4)(b) within a reasonable time after receiving the question.
- (3) The office may:
  - (a) sue or be sued; and
  - (b) contract with other public agencies for personnel management services.

Amended by Chapter 448, 2018 General Session

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

- (1) At least annually, the director shall report in person to the Legislative Management Committee, the governor, and the advocacy office, concerning the office's investments, performance, estimated distributions, and other activities.



- (2) The director shall report to the board concerning the work of the director and the investment activities and other activities of the office:
  - (a) in a public meeting at least six times per year; and
  - (b) as otherwise requested by the board.
- (3)
  - (a) Before November 1 of each year, the director shall:
    - (i) submit a written report to school community councils, created under Section 53G-7-1202, and charter trust land councils, established under Section 53G-7-1205, concerning the office's investments, performance, estimated distributions, and other activities; and
    - (ii) post the written report described in Subsection (3)(a)(i) on the office's website.
  - (b) A report under Subsection (3)(a) shall be prepared in simple language designed to be understood by the general public.
- (4) The director shall provide to the board:
  - (a) monthly written reports on the activities of the office;
  - (b) quarterly financial reports; and
  - (c) any other report requested by the board.
- (5) The director shall:
  - (a) invite the advocacy office director to attend any meeting at which the director gives a report under this section; and
  - (b) provide the advocacy office director:
    - (i) a copy of any written report prepared under this section; and
    - (ii) any other report requested by the advocacy office director.

Amended by Chapter 415, 2018 General Session

Amended by Chapter 448, 2018 General Session

## **Part 5 Nominating Committee**

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

- (1) There is established a School and Institutional Trust Fund Nominating Committee.
- (2) The nominating committee consists of:
  - (a) four members, appointed by the state treasurer upon recommendation by the advocacy office director, each of whom is a member of a respected professional investment organization;
  - (b) the chief investment officer of the University of Utah endowment;
  - (c) the chief investment officer of the Utah State University endowment; and
  - (d) the advocacy office director.
- (3) An individual appointed as a member of the nominating committee under Subsection (2)(a) shall be appointed based on the individual's expertise in:
  - (a) investment finance;
  - (b) institutional asset management;
  - (c) trust administration; or
  - (d) the practice of law in the areas of capital markets, securities law, trusts, foundations, endowments, investment finance, institutional asset management, or trust administration.
- (4) The term of a member appointed under Subsection (2)(a) is four years.
- (5) A nominating committee member shall serve until a successor is appointed and qualified.

- (6)
  - (a) If a member appointed under Subsection (2)(a) leaves office, the vacancy shall be filled in the same manner as the initial appointment under Subsection (2)(a).
  - (b) An individual appointed to fill a vacancy under Subsection (6)(a) serves the remainder of the unexpired term.
- (7) A member of the nominating committee 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 63A-3-107.

Amended by Chapter 448, 2018 General Session

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

- (1) The nominating committee shall select a chair and vice chair from its members.
- (2)
  - (a) Four members of the nominating committee constitute a quorum.
  - (b) An action of the nominating committee requires the affirmative vote of at least four members.
- (3) The nominating committee shall establish bylaws to govern the nominating committee.
- (4) The advocacy office shall provide staff support to the nominating committee.

Amended by Chapter 448, 2018 General Session

**53D-1-503 Process of nominating candidates for board membership.**

- (1) The nominating committee shall nominate at least two candidates for each position or vacancy on the board.
- (2) The nominating committee shall:
  - (a) nominate candidates who meet the criteria stated in Subsection 53D-1-301(3); and
  - (b) consider the character and reputation of candidates the nominating committee nominates.
- (3) If the state treasurer considers the candidates nominated under Subsection (1) to be unacceptable, the state treasurer may request the nominating committee to nominate at least two other candidates per appointment.
- (4) As many times as the state treasurer considers candidates nominated by the nominating committee to be unacceptable under Subsection (3), the nominating committee shall follow the process described in Subsections (1) and (2) until the state treasurer appoints a candidate.

Enacted by Chapter 426, 2014 General Session

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

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

- (1) Board members, the director, and office staff shall act in the best interests of the beneficiaries and comply with the duty of undivided loyalty to the beneficiaries.
- (2) A person who manages and invests trust fund money or assets shall:

- (a) manage and invest in good faith and with the care a prudent professional in a like position would exercise under similar circumstances;
  - (b) consider, as relevant:
    - (i) general economic conditions;
    - (ii) the possible effect of inflation or deflation;
    - (iii) any expected tax consequences of investment decisions or strategies;
    - (iv) the role that each investment or course of action plays within the overall investment portfolio of the trust fund;
    - (v) the expected net return from income and the appreciation of investments;
    - (vi) the expected returns and risk characteristics of individual assets;
    - (vii) the needs of the beneficiaries to receive distributions and to preserve capital;
    - (viii) liquidity;
    - (ix) asset allocation; and
    - (x) costs and management fees; and
  - (c) make management and investment decisions about an individual asset not in isolation but in the context of the trust fund's portfolio of investments as a whole and as part of an overall investment strategy, having risk and return objectives reasonably suited to the trust fund and to the beneficiaries.
- (3) A person who has special skills or expertise, or who is selected to assist in managing and investing the trust fund money or assets based on the person's representation of having special skills or expertise, has a duty to use those skills and that expertise in managing and investing trust fund money and assets.

Enacted by Chapter 426, 2014 General Session

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

- (1) In managing and investing trust fund money and assets, the office:
  - (a) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the trust fund, and the skills available to the office; and
  - (b) shall make a reasonable effort to verify facts related to the management and investment of trust fund money and assets.
- (2) Except as otherwise provided by law, the office may invest in any kind of property or any type of investment that is:
  - (a) consistent with this part; and
  - (b) in the best interests of the beneficiaries.
- (3) The office shall diversify the investments of trust fund money and assets.
- (4) Within a reasonable time after receiving a contribution to the trust fund, the office shall make and carry out decisions concerning the retention or disposition of the contribution or to rebalance the trust fund portfolio, in order to bring the trust fund into compliance with the purposes, terms, and distribution requirements of trust fund money and assets.
- (5) The board may delegate any management or investment function to the director, a committee of board members, or an employee of the office.

Enacted by Chapter 426, 2014 General Session

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

- (1)

- (a) The director may delegate to an external agent the management of a portion of the trust fund money or assets, if the delegation is prudent under the circumstances and consistent with the purposes of the trust fund.
  - (b) The director shall periodically review the actions of an agent under Subsection (1)(a) in order to monitor the agent's performance and compliance with the scope and terms of the delegation.
- (2) The director shall act in good faith, with the care that a prudent professional in a like position would exercise under similar circumstances, in:
- (a) selecting an agent;
  - (b) establishing the scope and terms of a delegation under Subsection (1); and
  - (c) periodically reviewing the agent's actions, as provided in Subsection (1)(b).
- (3) In performing a delegated function, an agent owes a duty to the state and the beneficiaries to exercise reasonable care to comply with the scope and terms of the delegation.

Enacted by Chapter 426, 2014 General Session

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

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

Enacted by Chapter 426, 2014 General Session

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

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

- (1)
- (a) Subject to Subsection (1)(b), a person aggrieved by a decision or action of the director or office may, in accordance with rules adopted by the board under Section 53D-1-702, petition the board for an administrative review of the decision or action.
  - (b) A person may not petition for review of:
    - (i) a decision whether to buy, sell, hold, or exchange a specific investment; or
    - (ii) an action to buy, sell, hold, or exchange a specific investment.
- (2)
- (a) The board may appoint a qualified hearing examiner to take evidence and make a recommendation for board action on the petition.
  - (b) If the board appoints a hearing examiner under Subsection (2)(a), the board shall, in conducting its review and making its decision on the petition, consider the hearing examiner's recommendation.
- (3) In making its decision on the petition, the board shall:
- (a) make findings and conclusions and base its decision on the findings and conclusions;
  - (b) uphold the decision or action of the director or office unless the board finds, by a preponderance of the evidence, that the decision or action violated applicable law, policy, or rule; and

- (c) inform the person who filed the petition of the person's right to judicial review of the board's decision.
- (4) A person aggrieved by a final decision of the board on a petition filed under this section may seek judicial review of that decision as provided in Sections 63G-4-402 and 63G-4-403.

Enacted by Chapter 426, 2014 General Session

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

- (1) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to govern proceedings on a petition under Section 53D-1-701.
- (2) Rules under Subsection (1) shall ensure procedural due process in proceedings relating to a petition under Section 53D-1-701.

Enacted by Chapter 426, 2014 General Session

**Chapter 2**  
**Land Trusts Protection and Advocacy Office**  
  
**Part 1**  
**General Provisions**

**53D-2-101 Title.**

This chapter is known as "Land Trusts Protection and Advocacy Office."

Enacted by Chapter 448, 2018 General Session

**53D-2-102 Definitions.**

As used in this chapter:

- (1) "Advocacy committee" means the Land Trusts Protection and Advocacy Committee, created in Section 53D-2-202.
- (2) "Advocacy director" means the director of the advocacy office, appointed as described in Section 53D-2-203.
- (3) "Advocacy office" means the Land Trusts Protection and Advocacy Office, created in Section 53D-2-201.
- (4) "School and institutional trust" or "trust" includes:
  - (a) school and institutional trust lands, as defined in Section 53C-1-103, and related assets; and
  - (b) funds and investments of school and institutional trust land revenue, as described in Title 53D, Chapter 1, School and Institutional Trust Fund Management Act.
- (5) "School and Institutional Trust System" means:
  - (a) the School and Institutional Trust Lands Administration, described in Title 53C, School and Institutional Trust Lands Management Act;
  - (b) the School and Institutional Trust Fund Office, described in Title 53D, Chapter 1, School and Institutional Trust Fund Management Act;
  - (c) the Land Trusts Protection and Advocacy Office, described in this chapter; and
  - (d) the School LAND Trust Program, described in Sections 53F-2-404 and 53G-7-1206.

- (6) "Trust beneficiaries" means those for whose benefit the school and institutional trust is managed and preserved, as required by:
- (a) the Utah Enabling Act;
  - (b) the Utah Constitution; and
  - (c) state law.

Enacted by Chapter 448, 2018 General Session

## Part 2

### Land Trusts Protection and Advocacy Office

#### **53D-2-201 Land Trusts Protection and Advocacy Office -- State treasurer oversight and rulemaking -- Advocacy office duties -- Applicability of Government Access and Records Management Act.**

- (1) There is created the Land Trusts Protection and Advocacy Office to represent the beneficiary interests of the school and institutional trust in advocating for:
- (a) distribution of trust revenue to current beneficiaries; and
  - (b) generation of trust revenue for future beneficiaries.
- (2) The state treasurer shall:
- (a) acting in a fiduciary capacity to trust beneficiaries, oversee and support the advocacy of the advocacy office, including:
    - (i) determining reporting requirements for the advocacy director and advocacy office; and
    - (ii) submitting an advocacy office budget to the Legislature; and
  - (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and this chapter, make rules to administer the advocacy office, including the duties described in Subsection (2)(a).
- (3) The advocacy office shall have an advocacy director, as described in Section 53D-2-203.
- (4) In accordance with the Utah Enabling Act, the Utah Constitution, and state law, the advocacy office shall act with undivided loyalty to the trust beneficiaries, advocating against the state using a trust asset to pursue a state goal that is inconsistent with a purpose of the trust associated with that asset.
- (5) To protect current and future beneficiary rights and interests as described in Subsection (1), the advocacy office shall advocate for:
- (a) productive use of and optimal revenue from school and institutional trust lands by the School and Institutional Trust Lands Administration, as described in Title 53C, School and Institutional Trust Lands Management Act;
  - (b) prudent and profitable investment of trust funds by the School and Institutional Trust Fund Office, as described in Title 53D, Chapter 1, School and Institutional Trust Fund Management Act;
  - (c) effective distribution of funds to public schools through the School LAND Trust Program described in Sections 53F-2-404 and 53G-7-1206; and
  - (d) optimization of revenue to all trust beneficiaries.
- (6) To fulfill the advocacy office's duties to trust beneficiaries, the advocacy office shall:
- (a) stay informed on the administration of the trust and trust assets, including:
    - (i) major School and Institutional Trust Land Administration transactions; and

- (ii) the School and Institutional Trust Fund Office investments and investment policy statements;
  - (b) fulfill advocacy office responsibilities and manage advocacy office activities in a prudent and professional manner;
  - (c) promote efficient use of trust budgets for trust beneficiaries; and
  - (d) properly account to trust beneficiaries and the Legislature, as described in Section 53D-2-203.
- (7)
- (a) Except as provided in Subsection (7)(b), the advocacy office and the advocacy committee are subject to Title 63G, Chapter 2, Government Records Access and Management Act.
  - (b) The advocacy office and the advocacy committee are not subject to Title 63G, Chapter 2, Government Records Access and Management Act, regarding a record described in Subsection 53D-1-103(3)(a) that the School and Institutional Trust Fund Office provides to the advocacy office or advocacy committee.

Amended by Chapter 336, 2021 General Session

**53D-2-202 Land Trusts Protection and Advocacy Committee -- Duties -- Governance.**

- (1) There is created the Land Trusts Protection and Advocacy Committee to:
- (a) oversee the activities of the advocacy director and the advocacy office;
  - (b) submit advocacy director candidate names to the state treasurer, as described in Section 53D-2-203;
  - (c) determine the advocacy director's compensation and annually review the compensation and performance of the advocacy director;
  - (d) receive quarterly reports from the advocacy director;
  - (e) review, amend as necessary, and transmit to the state treasurer proposed rules submitted by the advocacy director;
  - (f) receive the annual report described in Section 53D-2-203 from the advocacy director; and
  - (g) give policy direction to the advocacy office.
- (2) In accordance with Subsection (3), the advocacy committee consists of the following five members:
- (a) two individuals appointed by the School and Institutional Trust Lands Board of Trustees;
  - (b) one individual appointed by the School and Institutional Trust Fund Board of Trustees;
  - (c) one individual appointed by the state treasurer; and
  - (d) a State Board of Education staff member who administers the School LAND Trust Program, designated as described in Section 53G-7-1206.
- (3) A member of the advocacy committee:
- (a) may not be:
    - (i) the state treasurer or a current employee of the state treasurer;
    - (ii) a member of the School and Institutional Trust Lands Board of Trustees;
    - (iii) an employee of the School and Institutional Trust Lands Administration;
    - (iv) a member of the School and Institutional Trust Fund Board of Trustees; or
    - (v) an employee of the School and Institutional Trust Fund Office;
  - (b) shall have significant qualifications related to the purposes and activities of the school and institutional trust, such as:
    - (i) nonrenewable resource development;
    - (ii) renewable resource management;
    - (iii) real estate development; or

- (iv) investment management; and
  - (c) shall have demonstrated a commitment of time and loyalty to the purposes of the trust.
- (4)
- (a) Except as provided in Subsections (4)(b) and (c), an appointed member of the advocacy committee shall:
    - (i) serve a four-year term; and
    - (ii) receive notification of an appointment on or before December 1 of the year before the vacancy occurs for which the member is appointed.
  - (b) At the time of appointment or reappointment, the state treasurer shall adjust the length of the initial terms of the advocacy committee's appointed members to ensure that the terms are staggered so that approximately half of the advocacy committee is appointed every two years.
  - (c) If a vacancy occurs during the course of an appointed member's term, the appointing entity shall immediately appoint a replacement for the unexpired term.
- (5) Advocacy committee members shall annually elect a chair.
- (6)
- (a) The advocacy committee shall meet at least quarterly, at a time set by the chair.
  - (b) The chair or any two members of the advocacy committee may call an additional meeting.
- (7)
- (a) A quorum for the transaction of business is four members of the advocacy committee.
  - (b) Action by a majority of a quorum present constitutes the action of the advocacy committee.
- (8) An advocacy committee 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 63A-3-107.
- (9) The state treasurer's office shall provide staff support to the advocacy committee.

Enacted by Chapter 448, 2018 General Session

**53D-2-203 Land Trusts Protection and Advocacy Office director -- Appointment -- Removal -- Power and duties.**

- (1)
- (a) The advocacy committee shall:
    - (i) discuss candidates who may qualify for appointment as the advocacy director, as described in Subsection (1)(b);
    - (ii) determine the two most qualified candidates; and
    - (iii) submit the names of those two candidates to the state treasurer as potential appointees for the advocacy director.
  - (b) A potential appointee for advocacy director shall have significant expertise and qualifications relating to generating revenue to the school and institutional trust and the duties of the advocacy office and the advocacy director, which may include expertise in:
    - (i) business;
    - (ii) finance;
    - (iii) economics;
    - (iv) natural resources; or
    - (v) advocacy.
  - (c) From the individuals described in Subsection (1)(a), the state treasurer shall appoint one as the advocacy director.



- (2)
  - (a) An advocacy director shall serve a four-year term.
  - (b) If a vacancy occurs in the advocacy director's position, the advocacy committee and state treasurer shall, in accordance with Subsection (1), appoint a replacement director for a four-year term.
- (3) The advocacy committee may remove the advocacy director during a meeting that is not closed as described in Section 52-4-204, if:
  - (a) removal of the advocacy director is scheduled on the agenda for the meeting; and
  - (b) a majority of a committee quorum votes to remove the advocacy director.
- (4) In accordance with state and federal law, the advocacy director may attend a presentation, discussion, meeting, or other gathering related to the school and institutional trust.
- (5) In order to fulfill the duties of the advocacy office described in Section 53D-2-201, the advocacy director shall:
  - (a) maintain a direct relationship with each individual who is key to fulfilling the state's trustee obligations and duties related to the trust;
  - (b) facilitate open communication among key individuals described in Subsection (5)(a);
  - (c) actively seek necessary and accurate information;
  - (d) review and, if necessary, recommend the state auditor audit, activities involved in:
    - (i) generating trust revenue;
    - (ii) protecting trust assets; or
    - (iii) distributing funds for the exclusive use of trust beneficiaries;
  - (e) promote accurate record keeping of all records relevant to the trust and distribution to trust beneficiaries;
  - (f) report at least quarterly to the advocacy committee and the state treasurer on the current activities of the advocacy office;
  - (g) annually submit a proposed advocacy office budget to the state treasurer;
  - (h) regarding the trust's compliance with law, and among the School and Institutional Trust Lands System as a whole, report annually to:
    - (i) the advocacy committee;
    - (ii) the state treasurer;
    - (iii) the State Board of Education; and
    - (iv) the Executive Appropriations Committee;
  - (i) annually send a financial report regarding the relevant individual trust, and, upon request, report in person to:
    - (i) Utah State University, on behalf of the agricultural college trust;
    - (ii) the University of Utah;
    - (iii) the Utah State Hospital, on behalf of the mental hospital trust;
    - (iv) the Utah Schools for the Deaf and the Blind, on behalf of the institution for the blind trust and the deaf and dumb asylum trust;
    - (v) the youth in custody program at the State Board of Education, on behalf of the reform school trust;
    - (vi) the Division of Water Resources, created in Section 73-10-18, on behalf of the reservoir trust;
    - (vii) the College of Mines and Earth Sciences created in Section 53B-17-401;
    - (viii) each state teachers' college, based on the college's annual number of teacher graduates, on behalf of the normal school trust;
    - (ix) the Miners' Hospital described in Section 53B-17-201; and

- (x) the State Capitol Preservation Board, created in Section 63C-9-201, on behalf of the public buildings trust;
  - (j) as requested by the state treasurer, draft proposed rules and submit the proposed rules to the advocacy committee for review;
  - (k) in accordance with state and federal law, respond to external requests for information about the School and Institutional Trust Lands System;
  - (l) in accordance with state and federal law, speak on behalf of trust beneficiaries:
    - (i) at School and Institutional Trust Lands Administration meetings;
    - (ii) at School and Institutional Trust Fund Office meetings; and
    - (iii) with the media;
  - (m) review proposed legislation that affects the school and institutional trust and trust beneficiaries and advocate for legislative change that best serves the interests of the trust beneficiaries; and
  - (n) educate the public regarding the School and Institutional Trust Lands System.
- (6) With regard to reviewing the activities described in Subsection (5)(d), the advocacy director may have access to the financial reports and other data required for a review.

Enacted by Chapter 448, 2018 General Session

**53D-2-204 Land Trusts Protection and Advocacy Account -- Funding of advocacy office operations.**

- (1) As used in this section:
- (a) "Account" means the Land Trusts Protection and Advocacy Account created in this section.
  - (b) "School and Institutional Trust Fund Office director" or "SITFO director" means the director of the School and Institutional Trust Fund Office, appointed under Section 53D-1-401.
  - (c) "Trust fund" means the same as that term is defined in Section 53D-1-102.
  - (d) "Trust fund earnings" means the same as that term is defined in Section 53D-1-203.
- (2) There is created an enterprise fund known as the Land Trusts Protection and Advocacy Account.
- (3) The account is funded by money deposited into the account as provided in Subsection (4).
- (4)
- (a) Except as provided in Subsection (4)(c), the SITFO director shall deposit into the account a total amount of money, taken proportionately from trust fund earnings according to the value of the various funds established for the trust beneficiaries, that is equal to the annual appropriation that the Legislature makes to the advocacy office.
  - (b) The advocacy office may use money in the account to pay for the advocacy office's operating costs.
  - (c) If the amount of money deposited into the account under Subsection (4)(a) in any fiscal year exceeds the amount required by the advocacy office during that fiscal year to fund advocacy office operations, the SITFO director shall, in the following fiscal year, reduce the amount deposited into the account under Subsection (4)(a) by the amount of the unspent appropriation.

Amended by Chapter 191, 2019 General Session