

1 **SCHOOL AND INSTITUTIONAL TRUST**

2 **LANDS AMENDMENTS**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Thomas V. Hatch**

6 AN ACT RELATING TO SCHOOL AND INSTITUTIONAL TRUST LANDS; MODIFYING
7 THE PROCEDURE BY WHICH A PURCHASER RECEIVES LEGAL TITLE TO TRUST
8 LANDS TO CONFORM TO STANDARD REAL ESTATE PRACTICES; CLARIFYING THE
9 PROCEDURE THAT CLAIMANTS MUST FOLLOW TO MAINTAIN UNPATENTED
10 FEDERAL MINING CLAIMS ON LANDS ACQUIRED BY THE TRUST LANDS
11 ADMINISTRATION; AND MAKING CERTAIN TECHNICAL CHANGES.

12 This act affects sections of Utah Code Annotated 1953 as follows:

13 AMENDS:

14 **53C-1-201**, as last amended by Chapter 219, Laws of Utah 1998

15 **53C-2-407**, as last amended by Chapter 103, Laws of Utah 1996

16 **53C-4-102**, as last amended by Chapter 103, Laws of Utah 1996

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

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

19 **53C-1-201. Creation of administration -- Purpose -- Director.**

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

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

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

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

28 (i) (A) the director may make rules as approved by the board that allow the administration
29 to classify a business proposal submitted to the administration as protected under Section
30 63-2-304, for as long as is necessary to evaluate the [proposals] proposal;

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

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

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

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

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

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

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

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

46 (E) that the director has filed a copy of the rule and a rule analysis, stating the specific
47 reasons and justifications for its findings, with the Division of Administrative Rules and notified
48 interested parties as provided in Subsection 63-46a-4(7); [and]

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

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

58 (B) salary for exempted positions, except for the director, shall be set by the director, after

59 consultation with the director of the Department of Human Resource Management, within ranges
60 approved by the board. The board and director shall consider salaries for similar positions in
61 private enterprise and other public employment when setting salary ranges; and

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

66 (iv) the administration shall comply with Title 63, Chapter 56, Utah Procurement Code,
67 except where the board approves, upon recommendation of the director, an exemption under
68 Section 63-56-3 and simultaneous adoption of policies for procurement, which enable the
69 administration to efficiently fulfill its responsibilities under the law.

70 (b) (i) The board and director shall review the exceptions under Subsection (3)(a) and
71 make recommendations for any modification, if required, which the Legislature would be asked
72 to consider during its annual General Session.

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

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

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

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

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

88 Section 2. Section **53C-2-407** is amended to read:

89 **53C-2-407. Mineral lease application procedures.**

90 (1) Lands that are not encumbered by a current mineral lease for the same resource, a
91 withdrawal order, or other rule of the director prohibiting the lease of the lands, may be offered
92 for lease as provided in this section or may, with board approval, be committed to other contractual
93 arrangement under Subsection 53C-2-401(1)(d).

94 (2) (a) A notice of the land available for leasing shall be posted in the administration's
95 office.

96 (b) The notice shall:

97 (i) describe the land;

98 (ii) indicate what mineral interest in each tract is available for leasing; and

99 (iii) state the last date, which shall be no less than 15 days after the notice is posted, on
100 which bids may be received.

101 (3) (a) Applications for the lease of lands filed before the closing date stated in the notice
102 shall be considered to be filed simultaneously.

103 (b) The applications shall be:

104 (i) submitted in sealed envelopes; and

105 (ii) opened in the administration's office at 10:00 a.m. of the first business day following
106 the last day on which bids may be received.

107 (c) Leases shall be awarded to the highest responsible, qualified bidder, in terms of the
108 bonus paid in addition to the first year's rental, who submitted a bid in the manner required.

109 (d) (i) In cases of identical bids of successful bidders, the right to lease shall be determined
110 by drawing.

111 (ii) The drawing shall be held in public at the administration's office.

112 (4) (a) At the discretion of the director, mineral leases may be offered at an oral public
113 auction.

114 (b) The director may set a minimum bid for a public auction.

115 (5) The director may award a mineral lease without following the competitive bidding
116 procedures specified in Subsections (3) and (4) or conducting an oral public auction, if the mineral
117 lessee waives or relinquishes to the trust a prior mining claim, mineral lease, or other right which
118 in the opinion of the director might otherwise:

119 (a) defeat or encumber the selection of newly acquired land, either for indemnity or other
120 purposes, or the acquisition by the trust of any land; or

121 (b) cloud the title to any of those lands.

122 (6) Following the awarding of a lease to a successful bidder, deposits, except filing fees,
123 made by unsuccessful bidders shall be returned to those bidders.

124 (7) (a) Lands acquired through exchange or indemnity selection from the federal
125 government shall be subject to the vested rights of unpatented mining claimants under the Mining
126 Law of 1872, as amended, and other federal vested rights, both surface and minerals.

127 (b) Subsection (7)(a) does not:

128 (i) prevent the director from negotiating the accommodation of vested rights through any
129 method acceptable to the parties; or

130 (ii) relieve any person claiming vested rights under the Mining Law of 1872, as amended,
131 in lands acquired from the federal government from compliance with Section 53C-2-104.

132 (8) The director may lease lands in the order in which applications are filed if:

133 (a) the director offers trust lands for lease for mineral purposes according to the procedures
134 in Subsections (3) through (6) and the lands are not leased; or

135 (b) a period of time of not less than one year but less than three years has elapsed
136 following:

137 (i) a revocation of a withdrawal; or

138 (ii) the date an existing mineral lease is canceled, relinquished, surrendered, or terminated.

139 Section 3. Section **53C-4-102** is amended to read:

140 **53C-4-102. Sale of trust lands -- Fair market value -- Determination of sale --**

141 **Advertising proposed sales -- Sale procedures -- Defaults.**

142 (1) Trust lands may not be sold for less than the fair market value.

143 (2) (a) The director shall determine whether disposal or retention of all or a portion of a
144 property interest in trust lands is in the best interest of the trust.

145 (b) When it is determined that the disposal of an interest in trust lands is in the best interest
146 of the applicable trust, the transaction shall be accomplished in an orderly and timely manner.

147 (3) The director shall advertise any proposed sale, lease, or exchange of an interest in trust
148 lands in a reasonable manner consistent with the director's fiduciary responsibilities.

149 (4) (a) Any tract of trust land may be subdivided and sold, leased, or exchanged in
150 accordance with a plan or other action designating the land to be subdivided that is approved by
151 the director.

152 (b) The director may survey the tract and direct its subdivision.

153 (c) A plat of the survey shall be filed with the county recorder of the county in which the
154 land is located and with the administration.

155 (5) Sale conditions, including qualification of prospective purchasers, shall be in
156 accordance with accepted mortgage lending and real estate practices.

157 (6) Upon the sale of land, the director shall issue to the purchaser a certificate of sale
158 which describes the land purchased and states the amount paid, the amount due, and the time when
159 the principal and interest will become due.

160 [~~(7) Upon payment in full of principal and interest and the surrender of the original
161 certificate of sale for any tract of land sold, or payment in full of any amounts required to be paid
162 for the partial release of property, the governor shall issue a patent to the purchaser, heir, assignee,
163 successor in interest, or other grantee as determined by the director.]~~

164 (7) (a) Upon request by the director, the governor shall execute and deliver to the director
165 a patent for any tract of land sold in the name of the purchaser, heir, assignee, successor in interest,
166 or other grantee as determined by the director.

167 (b) The governor may execute patents to lots in platted subdivisions in blank, to be held
168 in escrow pending sale of the lots to final purchasers.

169 (c) Consistent with the director's fiduciary responsibilities, the director shall utilize
170 accepted real estate and escrow practices in closing sales of trust lands, except the director may
171 not permit the delivery of any patent to the grantee until payment in full of principal and interest,
172 or payment in full of any amounts required to be paid for the partial release of property has been
173 made.

174 (8) (a) If a purchaser of trust lands defaults in the payment of any installment of principal
175 or interest due under the terms of the contract of sale, the director shall notify the purchaser that
176 if the default is not corrected within 30 days after issuance of the notice the director shall proceed
177 with any remedy which the administration may pursue under law or the contract of sale.

178 (b) The notice shall be sent by registered or certified mail to the purchaser at the latest
179 address as shown by the records of the administration.

180 (c) If the default is not corrected by compliance with the requirements of the notice of
181 default within the time provided by the notice, the director may pursue any available remedy under
182 the contract of sale, including forfeiture.

183 (d) If forfeited lands are sold again to the same purchaser, the sale may be made by a new
184 and independent contract without regard to the forfeited agreement.

Legislative Review Note

as of 1-6-00 8:38 AM

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

Office of Legislative Research and General Counsel