

STATE LANDS AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael E. Noel

This act modifies the School and Institutional Trust Lands Code and Transportation Code by amending State Land provisions. This act clarifies that claimants filing initial unpatented federal mining claims shall include more detailed information and subsequent filings shall only include the name of the claim and the owner's intent regarding the claim. This act expands the directors authority to withdraw applications from permitting, sale, or other disposition, not just leasing, if the interests of the trust are best served through withdrawal. This act provides that certain board approved coal and mineral deposit agreements are not subject to the standard limitations concerning primary term and term extension. This act modifies the Transportation Code by providing that a temporary public easement granted for a highway is effective until a permanent easement has been established. This act makes technical changes.

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

AMENDS:

53C-1-201, as last amended by Chapter 260, Laws of Utah 2001

53C-1-202, as last amended by Chapter 176, Laws of Utah 2002

53C-2-104, as last amended by Chapter 202, Laws of Utah 1999

53C-2-401, as last amended by Chapter 103, Laws of Utah 1996

72-5-203, as last amended by Chapter 42 and renumbered and amended by Chapter 270, Laws of Utah 1998

ENACTS:

53C-2-105, Utah Code Annotated 1953

REPEALS:

53C-2-406, as enacted by Chapter 294, Laws of Utah 1994

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The board and director may include in their recommendations any other proposed

exceptions from the usual executive and legislative controls the board and director consider necessary to accomplish the purpose of this title.

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

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

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

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

Section 2. Section **53C-1-202** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) (a) Each board candidate shall possess outstanding professional qualifications pertinent to the purposes and activities of the trust.

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

(i) nonrenewable resource management or development;

(ii) renewable resource management or development; and

(iii) real estate.

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

(i) business;

(ii) investment banking;

(iii) finance;

(iv) trust administration;
(v) asset management; and
(vi) the practice of law in any of the areas referred to in Subsections (6)(b) and (6)(c)(i) through (v).

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

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

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

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

(11) An aggrieved party to a final action by the board may obtain judicial review of that action under ~~[Section]~~ Sections 63-46b-15 and 63-46b-16.

Section 3. Section **53C-2-104** is amended to read:

**53C-2-104. Preexisting federal mining claims on trust lands -- Filing of notice --
Conclusive evidence of abandonment.**

(1) The Legislature recognizes the importance of having an effective state filing system for unpatented federal mining claims located on trust lands prior to the state's acquisition of title that would allow the state to determine the extent of preexisting unpatented mining claims on those lands and eliminate the cloud on the state's title created by abandoned unpatented mining claims, while preserving the rights of owners of valid preexisting unpatented mining claims located on those lands.

(2) ~~[Prior to January 1, 1998, and annually thereafter]~~ Annually on or before December 31, each owner of an unpatented lode mining claim, placer mining claim, mill site claim, or tunnel site claim located pursuant to the general mining laws of the United States on lands now owned of record by the state in trust for the common schools or other beneficiary institutions shall file with the administration a notice as prescribed by Subsection (3).

(3) (a) The initial notice required by Subsection (2) that is filed ~~[prior to January 1, 1998,]~~ by a claimant shall include:

(i) a statement of the owner's intention to hold or abandon the claim;

(ii) a brief description of the type and nature of the claim;

(iii) the date the claim was located, and the date the claim was filed of record in county and federal records;

(iv) a copy of the official record of the notice of location or certificate of location of the claim; and

(v) a legal description of the claim, by legal subdivision or metes and bounds description, sufficient to locate the claimed lands on the ground.

(b) [~~A~~] Each subsequent notice required by Subsection (2) [~~that is filed after January 1, 1998,~~] shall include:

(i) the name of the claim; and

(ii) a statement of the owner's intention to hold or abandon the claim.

(4) (a) The administration shall note the existence of all claims for which notices have been filed in the central index of all trust lands required under Section 53C-2-101.

(b) The administration may impose a reasonable filing fee as a condition for accepting the required notices, not to exceed \$50 per claim, to defray the administrative costs of maintaining an index of claims.

(5) (a) Failure to file the notice required by this section constitutes an abandonment of the claim by the owner.

(b) Filing of the required notice by one owner of a claim in which multiple persons own or claim interests fulfills the filing requirements of this section.

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

(7) Acquisition of rights to extract minerals underlying trust lands is governed by Part 4 of this chapter.

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

Section 4. Section **53C-2-105** is enacted to read:

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

(1) The director may at any time withdraw trust lands from applications for leasing.

permitting, sale, or other disposition of any nature upon a finding that the interests of the trust would best be served through withdrawal.

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

Section 5. Section **53C-2-401** is amended to read:

53C-2-401. Coal and mineral deposits reserved -- Exceptions.

(1) (a) Except as otherwise expressly provided by law, coal and mineral deposits in trust lands are reserved to the respective trust.

(b) Each certificate of sale and patent issued shall contain such a reservation.

(c) The purchaser of any lands belonging to the trust:

(i) acquires no right, title, or interest in coal or mineral deposits; and

(ii) is subject to the conditions and limitations prescribed by law providing for the state and any person authorized by it to:

(A) prospect or mine;

(B) remove the deposits; and

(C) occupy and use as much of the surface of the lands as may be required for any purpose reasonably incident to the mining and removal of the deposits.

(d) (i) Coal and mineral deposits in trust lands may be leased on a rental and royalty basis.

(ii) The administration may also, with board approval, enter into joint ventures, farmout agreements, exploration agreements, operating agreements, and other business arrangements for the disposition of coal and mineral deposits in trust lands.

(iii) The mineral estate in trust lands may not be sold except as authorized in Subsection (2).

(iv) Agreements made under Subsection (1)(d)(ii) are not subject to Subsections 53C-2-405(3) and (4).

(2) Except as otherwise prohibited by the Jones Act of January 25, 1927, 43 U.S.C. Sections 870-871, mineral interests in trust lands may be exchanged for mineral interests of

comparable value or otherwise disposed of, if their retention would create a liability exceeding their value.

(3) (a) Common varieties of sand, gravel, and cinders are not considered to be minerals under this section but may be reserved by specific action of the director.

(b) Common varieties do not include deposits which are valuable because the deposit contains characteristics which give it distinct and special value.

Section 6. Section **72-5-203** is amended to read:

72-5-203. Public easement or right of entry -- Grant -- Application -- Conditions.

(1) (a) (i) Subject to Section 53C-1-302 and Subsection 53C-1-204(1), a temporary public easement or right of entry is granted for each highway existing prior to January 1, 1992, that terminates at or within or traverses any state lands and that has been constructed and maintained or used by a responsible authority.

(ii) The temporary public easement or right of entry granted under Subsection (1)(a)(i) is 100 feet wide for each class A and B highway.

(b) Each easement shall remain in effect through June 30, 2004, or until a permanent easement or right of entry has been established under Subsection (2), whichever is ~~less~~ greater.

(2) (a) The School and Institutional Trust Lands Administration and the Division of Forestry, Fire and State Lands shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establishing an application process for a responsible authority to obtain a permanent easement or right of entry over any temporary public easement granted under Subsection (1), subject to the provisions of Subsections (2)(b), (c), and (d).

(b) A grant of a permanent easement or right of entry across sovereign lands shall be made upon a showing to the Division of Forestry, Fire and State Lands that continued use of the easement will provide a public benefit commensurate with the value of the permanent easement or right of entry.

(c) A grant of a permanent easement or right of entry across trust lands shall be made upon a showing to the School and Institutional Trust Lands Administration that the grant is consistent with the state's fiduciary responsibilities under Section 53C-1-302 and Subsection

53C-1-204(1).

(d) A grant of a permanent easement or right of entry across state lands other than sovereign and trust lands shall be made upon a showing to the managing unit of state government that the continued use will provide a public benefit commensurate with the value of the easement and will not unreasonably interfere with the purposes for which the land was obtained or is now held.

(3) The grant of the temporary public easement or right of entry under Subsection (1) is consistent with the trust responsibilities of the state and in the best interest of the state.

(4) A responsible authority that has been granted a permanent easement or right of entry over state lands may maintain the permanent easement or right of entry for the uses to which the permanent easement or right of entry was put prior to and including January 1, 1992, subject to the right of the managing unit of state government or private party to relocate the permanent easement or right of entry.

(5) The grant of a permanent easement or right of entry under this section is effective on the date the highway was originally constructed or established for public use.

Section 7. Repealer.

This act repeals:

Section **53C-2-406, Withdrawal of trust lands from leasing.**