

1                   **SCHOOL AND INSTITUTIONAL TRUST**  
2                   **LANDS - CLARIFYING REFERENCES TO**  
3                   **RULES AND POLICIES**

4                   2004 GENERAL SESSION

5                   STATE OF UTAH

6                   **Sponsor: James R. Gowans**

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7  
8 **LONG TITLE**

9 **General Description:**

10           This bill clarifies the School and Institutional Trust Lands Administration's authority to  
11   make administrative rules.

12 **Highlighted Provisions:**

13           This bill:

14           ▶ clarifies that the term "rule" or its derivations shall be used to describe actions taken  
15   by the School and Institutional Trust Lands Administration that meet the  
16   requirements for rulemaking.

17 **Monies Appropriated in this Bill:**

18           None

19 **Other Special Clauses:**

20           None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23           **53C-1-201**, as last amended by Chapter 192, Laws of Utah 2003

24           **53C-1-303**, as last amended by Chapter 126, Laws of Utah 1997

25           **53C-2-201**, as last amended by Chapter 299, Laws of Utah 1995

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26  
27 *Be it enacted by the Legislature of the state of Utah:*



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

29 **53C-1-201. Creation of administration -- Purpose -- Director.**

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

32 (b) The administration shall manage all school and institutional trust lands and assets  
33 within the state, except as otherwise provided in Title 53C, Chapter 3 [of this title], Deposit  
34 and Allocation of Revenue from Trust Lands, and Section 51-7-12.

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

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

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

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

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

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

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

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

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

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

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

58 (E) that the director has filed a copy of the rule and a rule analysis, stating the specific

59 reasons and justifications for its findings, with the Division of Administrative Rules and  
60 notified interested parties as provided in Subsection 63-46a-4(7); and

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

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

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

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

78 (iv) the administration shall comply with Title 63, Chapter 56, Utah Procurement  
79 Code, except where the board approves, upon recommendation of the director, exemption from  
80 the Utah Procurement Code, and simultaneous adoption of [~~policies~~] rules under Title 63,  
81 Chapter 46a, Utah Administrative Rulemaking Act, for procurement, which enable the  
82 administration to efficiently fulfill its responsibilities under the law.

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

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

89 (4) The administration is managed by a director of school and institutional trust lands

90 appointed by a majority vote of the board of trustees with the consent of the governor.

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

93 (b) The board shall provide policies for the ownership and control of Native American  
94 remains that are discovered or excavated on school and institutional trust lands in consultation  
95 with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4,  
96 Native American Grave Protection and Repatriation Act. The director may make rules in  
97 accordance with Title 63, Chapter 46a, Administrative Rulemaking Act, to implement policies  
98 provided by the board regarding Native American remains.

99 (6) In connection with joint ventures for the development of trust lands and minerals  
100 approved by the board under Subsections 53C-1-303(4)[~~(e)~~] (e) and 53C-2-401(1)(d), the  
101 administration may become a member of a limited liability company under Title 48, Chapter  
102 2c, Utah Revised Limited Liability Company Act, and is considered a person under Section  
103 48-2c-102 for such purposes.

104 Section 2. Section **53C-1-303** is amended to read:

105 **53C-1-303. Responsibilities of director -- Budget review -- Legal counsel --**  
106 **Contract for services.**

107 (1) In carrying out the policies of the board of trustees and in establishing procedures  
108 and rules the director shall:

109 (a) take an oath of office before assuming any duties as the director;

110 (b) adopt procedures and rules necessary for the proper administration of matters  
111 entrusted to the director by state law and board policy;

112 (c) submit to the board for its review and concurrence on any rules necessary for the  
113 proper management of matters entrusted to the administration;

114 (d) faithfully manage the administration under the policies established by the board;

115 (e) submit to the board and for public inspection by October 1 of each year, an annual  
116 management budget and financial plan for operations of the administration and, after approval  
117 by the board, submit the budget to the governor;

118 (f) direct and control the budget expenditures as finally authorized and appropriated;

119 (g) establish job descriptions and employ, within the limitation of the budget, staff  
120 necessary to accomplish the purposes of the office subject to Section 53C-1-201;

121 (h) establish, in accordance with generally accepted principles of fund accounting, a  
122 system to identify and account for the assets and vested interests of each beneficiary;

123 (i) maintain appropriate records of trust activities to enable auditors appointed by  
124 appropriate state agencies or the board to conduct periodic audits of trust activities;

125 (j) provide that all leases, contracts, and agreements be submitted to legal counsel for  
126 review of compliance with applicable law and fiduciary duties prior to execution and utilize the  
127 services of the attorney general as provided in Section 53C-1-305;

128 (k) keep the board, beneficiaries, governor, Legislature, and the public informed about  
129 the work of the director and administration by reporting to the board in a public meeting at  
130 least once during each calendar quarter; and

131 (l) respond in writing within a reasonable time to a request by the board for responses  
132 to questions on policies and practices affecting the management of the trust.

133 (2) Procedures and rules adopted by the Division of State Lands and Forestry as they  
134 relate to trust lands prior to the effective date of this act remain in effect until amended or  
135 repealed by the director.

136 (3) The administration shall be the named party in substitution of the Division of State  
137 Lands and Forestry or its predecessor agencies, with respect to all documents affecting trust  
138 lands from the effective date of this act.

139 (4) The director may:

140 (a) with the consent of the state risk manager and the board, manage lands or interests  
141 in lands held by any other public or private party pursuant to policies established by the board  
142 and may make rules to implement these board policies;

143 (b) sue or be sued as the director of school and institutional trust lands;

144 (c) contract with other public agencies for personnel management services;

145 (d) contract with any public or private entity to make improvements to or upon trust  
146 lands and to carry out any of the responsibilities of the office, so long as the contract requires  
147 strict adherence to trust management principles, applicable law and regulation, and is subject to  
148 immediate suspension or termination for cause; and

149 (e) with the approval of the board enter into joint ventures and other business  
150 arrangements consistent with the purposes of the trust.

151 (5) Any application or bid required for the lease, permitting, or sale of lands in a

152 competitive process or any request for review pursuant to Section 53C-1-304 shall be  
153 considered filed or made on the date received by the appropriate administrative office, whether  
154 transmitted by United States mail or in any other manner.

155 Section 3. Section **53C-2-201** is amended to read:

156 **53C-2-201. Planning procedures -- Assistance from other state agencies -- Plans**  
157 **consistent with trust responsibilities.**

158 (1) The director:

159 (a) shall develop rules describing the degree of planning necessary for each category of  
160 activity on trust lands; and

161 (b) may request other state agencies to generate technical data or other support services  
162 for the development and implementation of trust lands plans.

163 (2) The plans for school and institutional trust lands shall be:

164 (a) developed in a manner consistent with the director's responsibility to insure that the  
165 interest of the trust beneficiaries is paramount; and

166 (b) if required by rule, approved by the board.

167 (3) The director shall ~~[adopt policies]~~ make rules under Title 63, Chapter 46a, Utah  
168 Administrative Rulemaking Act, for notifying and consulting with interested parties under this  
169 section.

170 (4) Subject to Subsection ~~[53C-2-201]~~(1), the development of a written plan is not a  
171 prerequisite to actions by the director.

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**Legislative Review Note**  
**as of 1-13-04 10:01 AM**

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

**Office of Legislative Research and General Counsel**

**Legislative Committee Note**  
**as of 01-19-04 12:57 PM**

The Administrative Rules Review Committee recommended this bill.

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**Fiscal Note**  
**Bill Number HB0214**

**School and Institutional Trust Lands-Clarifying References to Rules  
and Policy**

*27-Jan-04*  
*10:42 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**