

1 **SCHOOL AND INSTITUTIONAL TRUST**
2 **LANDS MANAGEMENT ACT REVISIONS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Mike Dmitrich**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies mineral leasing procedures on school and institutional trust lands.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines "mineral" in the School and Institutional Trust Lands Management Act to
13 include oil, gas, and hydrocarbons;
14 ▶ reduces the maximum length of the primary term of certain mineral leases;
15 ▶ removes a requirement that, under certain circumstances, a mineral lease must be
16 extended after the primary term has expired;
17 ▶ allows an oral auction to be conducted when identical lease bids are submitted; and
18 ▶ makes technical changes.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 **⚡→ [None] This bill provides an immediate effective date. ←⚡**

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **9-9-402**, as last amended by Chapter 299, Laws of Utah 1995

26 **17A-2-522**, as last amended by Chapter 299, Laws of Utah 1995

27 **17A-2-818**, as last amended by Chapters 1 and 254, Laws of Utah 2000



- 28 **17A-3-805**, as last amended by Chapter 299, Laws of Utah 1995
- 29 **53C-1-103**, as repealed and reenacted by Chapter 294, Laws of Utah 1994
- 30 **53C-2-405**, as last amended by Chapter 40, Laws of Utah 2004
- 31 **53C-2-407**, as last amended by Chapter 103, Laws of Utah 1996
- 32 **57-6-4**, as last amended by Chapter 299, Laws of Utah 1995

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

35 Section 1. Section **9-9-402** is amended to read:

36 **9-9-402. Definitions.**

37 As used in this part:

38 (1) "Burial site" means any natural or prepared physical location, whether originally
 39 below, on, or above the surface of the earth, into which as a part of the death rite or ceremony
 40 of a culture individual human remains are deposited.

41 (2) "Cultural affiliation" means that there is a relationship of shared group identity that
 42 can be reasonably traced historically or prehistorically between a present day Indian tribe and
 43 an identifiable earlier group.

44 (3) "Division" means the Division of Indian Affairs.

45 (4) "Indian tribe" means any tribe, band, nation, or other organized group or
 46 community of Indians that is recognized as eligible for the special programs and services
 47 provided by the United States to Indians because of their status as Indians.

48 (5) "Lineal descendant" means the genealogical descendant established by oral or
 49 written record.

50 (6) "Native American" means of or relating to a tribe, people, or culture that is
 51 indigenous to the United States.

52 (7) "Remains" means all or part of a physical individual and objects on or attached to
 53 the physical individual that are placed there as part of the death rite or ceremony of a culture.

54 (8) "State lands" means any lands owned by the state or its subdivisions, except [~~those~~]
 55 school and institutional trust lands as defined in [Subsection] Section 53C-1-103[(6)].

56 Section 2. Section **17A-2-522** is amended to read:

57 **17A-2-522. State lands subject.**

58 (1) All lands in the state now owned or hereafter acquired by the state, other than

59 ~~[those lands]~~ school and institutional trust lands as defined in ~~[Subsection]~~ Section
 60 53C-1-103~~(6)~~, which are located within any drainage district now organized under the laws of
 61 the state, or to be hereafter organized, are hereby made and declared to be subject to all the
 62 provisions of the laws of the state relating to the drainage of lands for agricultural purposes to
 63 the same extent and in the same manner in which lands of like character held in private
 64 ownership are or may be subject to those laws, except as hereinafter provided.

65 (2) The state, and all persons legally holding unpatented state lands under entries or
 66 contracts of purchase from the state, are accorded all the rights, privileges, and benefits given
 67 by the state's drainage laws to persons holding lands of like character in private ownership.

68 (3) No provision of this part may be applied to, or enforced against, school or
 69 institutional trust lands without the consent of the director of the School and Institutional Trust
 70 Lands Administration acting in accordance with Sections 53C-1-102 and 53C-1-303.

71 Section 3. Section **17A-2-818** is amended to read:

72 **17A-2-818. Powers of incorporated districts -- Preferential right of city to**
 73 **purchase water.**

74 (1) (a) Any district incorporated as provided in this part may:

75 (i) have perpetual succession;

76 (ii) sue and be sued in all actions and proceedings and in all courts and tribunals of
 77 competent jurisdiction;

78 (iii) adopt a corporate seal and alter it;

79 (iv) take by grant, purchase, bequest, devise, or lease, and hold, enjoy, lease, sell,
 80 encumber, alienate, or otherwise dispose of, water, waterworks, water rights, and sources of
 81 water supply, and any real and personal property of any kind within or without the district and
 82 within and without Utah necessary or convenient to the full exercise of its powers;

83 (v) acquire, construct, or operate, control, and use works, facilities, and means
 84 necessary or convenient to the exercise of its powers, both within and without the district and
 85 within and without Utah; and

86 (vi) perform any and all things necessary or convenient to the full exercise of the
 87 powers granted under this section.

88 (b) (i) Any district incorporated as provided in this part may have and exercise the
 89 power of eminent domain and, in the manner provided by law for the condemnation of private

90 property for public use, take any property necessary to the exercise of the powers granted under
91 this section.

92 (ii) In any proceeding relative to the exercise of the power of eminent domain, the
93 district has the same rights, powers, and privileges as a municipal corporation.

94 (2) (a) Any district incorporated as provided in this part may:

95 (i) construct and maintain works and establish and maintain facilities across or along
96 any public street or highway and in, upon, or over any vacant public lands, that are now, or may
97 become, the property of the state, other than [~~those lands~~] school and institutional trust lands as
98 defined in [~~Subsection~~] Section 53C-1-103[~~(6)~~]; and

99 (ii) construct works and establish and maintain facilities across any stream of water or
100 watercourse if the district promptly restores the street or highway to its former state of
101 usefulness as nearly as may be and does not use the street or highway in a manner that
102 completely or unnecessarily impairs the usefulness of it.

103 (b) (i) In the use of streets, the district is subject to the reasonable rules and regulations
104 concerning excavations and the refilling of excavations, the relaying of pavements and the
105 protection of the public during periods of construction of the county or municipality in which
106 the streets are located.

107 (ii) The county or municipality may not require the district to pay any license or permit
108 fees, or file any bonds.

109 (iii) The county or municipality may require the district to pay reasonable inspection
110 fees.

111 (3) (a) Any district incorporated as provided in this part may borrow money, incur
112 indebtedness, and issue bonds and other obligations.

113 (b) A district may not issue bonds that pledge the full faith and credit of the district for
114 payment if those bonds, in the aggregate, exceed 10% of the fair market value, as defined under
115 Section 59-2-102, of the taxable property in the district as computed from the last equalized
116 assessment roll for county purposes before the issuance of the bonds.

117 (c) For purposes of this Subsection (3), the district shall include the fair market value
118 of all tax equivalent property, as defined under Section 59-3-102, as a part of the fair market
119 value of taxable property in the district.

120 (4) Contracts and agreements with the United States of America, and with any water

121 users' association or any other public, cooperative, or private entity from which the district
122 procures water, and bonds payable solely from revenues of the district other than from the
123 proceeds of ad valorem taxes, are not within the limitation established by Subsection (3).

124 (5) (a) Any district incorporated as provided in this part may fix and determine the
125 funds required for district purposes of every nature and apportion and charge the same against
126 the area of each city within the district by following the procedures and requirements of this
127 Subsection (5).

128 (b) As to the costs of all water, water rights, reservoirs, canals, conduits, and other
129 works for which the district as a whole receives the benefit, and because of which the district is
130 indebted or because of which the district has made payment without any previous
131 apportionment and charge having been made, and the charges made against the district because
132 of its ownership of stock in any water users' association, in the same proportion as the water
133 and water rights set apart or allotted to each area bear to the total water and water rights owned
134 or held by the district.

135 (c) As to that portion of these funds required for operation, maintenance, and the cost
136 of construction of distributing systems, the district shall equitably apportion these costs and
137 determine and base them on the benefits and the relative cost of service provided by the district
138 to each respective area.

139 (6) (a) Any district incorporated as provided in this part may:

140 (i) levy and collect taxes for the purposes of carrying on the operations and paying the
141 obligations of the district; and

142 (ii) in any year, levy a tax sufficient to cover in full any deficit that may have resulted
143 from tax delinquencies for any preceding year.

144 (b) (i) Taxes levied under this Subsection (6) for administering the district and
145 maintaining and operating its properties may not exceed .0005 per dollar of taxable value of
146 taxable property in the district.

147 (ii) Taxes levied to pay principal of and interest on the bonds of the district, to pay
148 indebtedness and interest owed to the United States of America, or to pay assessments or other
149 amounts due any water users' association or other public cooperative, or private entity from
150 which the district procures water are not subject to the limitation established by [this]
151 Subsection (5)(b).

152 (c) (i) The district shall:

153 (A) levy taxes for the payment of principal of and interest on the bonds of the district
154 as separate and special levies for that specific purpose; and

155 (B) apply the proceeds from them solely to the payment of this principal and interest.

156 (ii) As separate and special levies, these levies are not subject to any priorities in favor
157 of obligations of the district in existence at the time the bonds were issued.

158 (d) (i) The district may not levy any of the taxes authorized by this Subsection (6)
159 unless it has conducted, at its regular place of business, a public hearing on the purposes and
160 necessities of the taxation.

161 (ii) The board of trustees of the district shall publish notice of the public hearing at
162 least seven days prior to the hearing in a newspaper of general circulation published in the
163 county or counties in which the district is located.

164 (e) Any district incorporated as provided in this part may:

165 (i) enter into contracts, employ and retain personal services, and employ laborers;

166 (ii) create, establish, and maintain and elect, appoint, and employ necessary and
167 convenient:

168 (A) officers, attorneys, and agents convenient for the transaction of the business of the
169 district;

170 (B) officers and positions as necessary; and

171 (C) employees.

172 (7) (a) Any district incorporated as provided in this part may:

173 (i) join with one or more other corporations, public or private, for the purpose of
174 carrying out any of its powers;

175 (ii) contract with any other corporation or corporations for the purposes of financing
176 acquisitions, constructions, and operations;

177 (iii) in the contract, obligate itself severally or jointly with the other corporations; and

178 (iv) secure, guarantee, or become surety for the payment of any indebtedness, or the
179 performance of any contract or other obligation that may be, or has been, incurred or entered
180 into by any corporation in which the district has acquired shares of stock by subscription or
181 otherwise.

182 (b) The contracts may provide for:

- 183 (i) contributions to be made by each party to them;
- 184 (ii) the division and apportionment of the expenses of the acquisitions and operations;
- 185 (iii) the division and apportionment of the benefits, the services, and the products from
- 186 them; and
- 187 (iv) an agency to effect the acquisitions and carry on these operations.
- 188 (c) The contracts shall provide the powers and the methods of procedure for the agency
- 189 the method by which the agency may contract.
- 190 (d) The contract may contain further covenants and agreements as necessary and
- 191 convenient to accomplish its purposes.
- 192 (8) Any district incorporated as provided in this part may:
- 193 (a) acquire water and water rights within or without Utah;
- 194 (b) develop, store, and transport water;
- 195 (c) subscribe for, purchase, and acquire stock in canal companies, water companies,
- 196 and water users' associations;
- 197 (d) provide, sell, lease, and deliver water within or outside of the district for municipal
- 198 and domestic purposes, irrigation, power, milling, manufacturing, mining, and metallurgical
- 199 and any and all other beneficial uses;
- 200 (e) fix the rates;
- 201 (f) acquire, construct, operate, and maintain any works, facilities, improvements, and
- 202 property that are necessary or convenient; and
- 203 (g) in the doing of all of these things:
- 204 (i) obligate itself jointly with other persons and corporations, public and private; and
- 205 (ii) execute and perform these obligations according to their tenor.
- 206 (9) (a) Any district incorporated as provided in this part may invest any surplus money
- 207 in the district treasury, including any money in any sinking fund established for the purpose of
- 208 providing for the payment of the principal or interest of any bonded contract or other
- 209 indebtedness or for any other purpose, not required for immediate necessities of the district, by
- 210 following the procedures and requirements of Title 51, Chapter 7, State Money Management
- 211 Act.
- 212 (b) The district shall ensure that the sales of any bonds or treasury notes purchased and
- 213 held are made in season so that the proceeds may be applied to the purposes for which the

214 money, with which the bonds or treasury notes were originally purchased, was placed in the
215 treasury of the district.

216 (c) The treasurer and controller, with the approval of the attorney, shall perform the
217 functions and duties authorized by this Subsection (9) under rules adopted by the board of
218 trustees of the district.

219 (10) Each city, the area of which is a part or all of any district incorporated under this
220 part, has a preferential right to purchase from the district, at rates determined by the board of
221 trustees of the district, for distribution by the city, or any public utility empowered by the city
222 for the purpose, for domestic, municipal, and other beneficial uses within the city, a portion of
223 the water served by the district which shall bear the same ratio to all of the water supply of the
224 district as the total accumulation of amounts levied as taxes by the district against the property
225 of the city which is within the area of the district shall bear to the total of all taxes levied by the
226 district against the property in all of the cities in the areas of which are within the area of the
227 district.

228 Section 4. Section **17A-3-805** is amended to read:

229 **17A-3-805. District a political subdivision -- Functions, powers, and duties.**

230 Each district organized under this part is a political subdivision of the state and has and
231 shall exercise the following functions, powers, and duties to:

232 (1) employ, subject to available funds, clerical and staff personnel, including legal
233 staff;

234 (2) conduct surveys, investigations, and research relating to soil erosion, floodwater,
235 nonpoint water pollution, flood control, water pollution, sediment damage, and watershed
236 development;

237 (3) devise and implement measures for the prevention of soil erosion, floodwater and
238 sediment damages, nonpoint water pollution, and for the conservation, development, utilization
239 and disposal of water on state or private lands with the consent of the land occupier, and in the
240 case of school and institutional trust lands as defined in [~~Subsection~~] Section 53C-1-103[~~(6)~~],
241 with the consent of the director of the School and Institutional Trust Lands Administration,
242 acting in accordance with Sections 53C-1-102 and 53C-1-303;

243 (4) construct, improve, operate, and maintain any structures considered necessary or
244 convenient for the performance of any operation authorized by this part, and acquire property,

245 both real and personal, through purchase, or otherwise, and maintain, improve, and administer
246 such property consistent with the purposes of this part;

247 (5) enter into contracts or agreements in the name of the district, and sue and be sued;

248 (6) receive funds from any federal or state agency or from any county, city, or other
249 political subdivision within the state or from any private source;

250 (7) annually submit to the commission on or before January 30, of each year, a copy of
251 the minutes of each district meeting, a copy of its annual work plan, and an accounting of the
252 district's financial affairs. The accounting shall be prepared by a disinterested person and show
253 the district's debits and credits including accounts payable and accounts receivable, the purpose
254 of each debit, the source of each credit, and the actual cash balance on hand; and

255 (8) do all other things necessary or convenient for the efficient and effective
256 administration of the district.

257 Section 5. Section **53C-1-103** is amended to read:

258 **53C-1-103. Definitions.**

259 As used in this title:

260 (1) "Administration" means the School and Institutional Trust Lands Administration.

261 (2) "Board" or "board of trustees" means the School and Institutional Trust Lands
262 Board of Trustees.

263 (3) "Director" or "director of school and institutional trust lands" means the chief
264 executive officer of the School and Institutional Trust Lands Administration.

265 (4) "Mineral" includes oil, gas, and hydrocarbons.

266 [~~(4)~~] (5) "Nominating committee" means the committee [~~which~~] that nominates
267 candidates for positions and vacancies on the board.

268 [~~(5)~~] (6) "Policies" means statements applying to the administration that broadly
269 prescribe a future course of action and guiding principles.

270 [~~(6)~~] (7) "School and institutional trust lands" or "trust lands" means those properties
271 granted by the United States in the Utah Enabling Act to the state in trust, and other lands
272 transferred to the trust, which must be managed for the benefit of:

273 (a) the state's public education system; or

274 (b) the institutions of the state which are designated by the Utah Enabling Act as
275 beneficiaries of trust lands.

276 Section 6. Section **53C-2-405** is amended to read:

277 **53C-2-405. Mineral leases -- Multiple leases on same land -- Lease terms.**

278 (1) (a) Mineral leases, including oil, gas, and hydrocarbon leases, may be issued for
279 prospecting, exploring, developing, and producing minerals ~~[covering]~~ described by rule as
280 available for lease on any portion of trust lands or the reserved mineral interests of the trust.

281 (b) (i) Leases may be issued for different types of minerals on the same land.

282 (ii) If leases are issued for different types of minerals on the same land, the leases shall
283 include stipulations for simultaneous operations.

284 (c) ~~[No more than one lease]~~ Leases may not be issued for the same resource on the
285 same land.

286 (2) (a) Each mineral lease issued by the administration shall provide for an annual
287 rental of not less than \$1 per acre per year.

288 (b) However, a lease may provide for a rental credit, minimum rental, or minimum
289 royalty upon commencement of production, as prescribed by rules of the director.

290 (3) The primary term of a mineral lease may not exceed~~[-]~~ ten years.

291 ~~[(a) 20 years for oil shale or tar sands; or]~~

292 ~~[(b) ten years for oil, gas, or any other mineral.]~~

293 (4) The director shall make rules regarding the continuation of a mineral lease after the
294 primary term has expired~~[-, which shall provide that a mineral lease shall continue so long as:]~~.

295 ~~[(a) the mineral covered by the lease is being produced in paying quantities from:]~~

296 ~~[(i) the leased premises;]~~

297 ~~[(ii) lands pooled, communitized, or unitized with the leased premises; or]~~

298 ~~[(iii) lands constituting an approved mining or drilling unit with respect to the leased~~
299 ~~premises; or]~~

300 ~~[(b) (i) the lessee is engaged in diligent operations, exploration, or development which~~
301 ~~is reasonably calculated to advance development or production of the mineral covered by the~~
302 ~~lease from:]~~

303 ~~[(A) the leased premises;]~~

304 ~~[(B) lands pooled, communitized, or unitized with the leased premises; or]~~

305 ~~[(C) lands constituting an approved mining or drilling unit with respect to the leased~~
306 ~~premises; and]~~

307 ~~[(ii) the lessee pays a minimum royalty.]~~

308 ~~[(5) For the purposes of Subsection (4), diligent operations with respect to oil, gas, or~~
309 ~~other hydrocarbon leases may include cessation of operations not in excess of 90 days in~~
310 ~~duration.]~~

311 Section 7. Section **53C-2-407** is amended to read:

312 **53C-2-407. Mineral lease application procedures.**

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

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

319 (b) The notice shall:

320 (i) describe the land;

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

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

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

326 (b) The applications shall be:

327 (i) submitted in sealed envelopes; and

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

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

332 (d) ~~[(i)]~~ In cases of identical bids of successful bidders~~[-the]~~:

333 (i) the right to lease shall be determined by drawing[-] or oral auction;

334 (ii) the determination of whether to award the lease by drawing or oral auction shall be
335 made at the sole discretion of the director; and

336 ~~[(ii)]~~ (iii) [The] the drawing or oral auction shall be held in public at the
337 administration's office in a manner calculated to optimize the return to the trust land

338 beneficiary.

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

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

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

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

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

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

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

354 (b) Subsection (7)(a) does not prevent the director from negotiating the
355 accommodation of vested rights through any method acceptable to the parties.

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

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

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

361 (i) a revocation of a withdrawal; or

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

364 Section 8. Section **57-6-4** is amended to read:

365 **57-6-4. Certain persons considered to hold under color of title.**

366 (1) A purchaser in good faith at any judicial or tax sale made by the proper person or
367 officer has color of title within the meaning of this chapter, whether or not the person or officer
368 has sufficient authority to sell, unless the want of authority was known to the purchaser at the

369 time of the sale.

370 (2) (a) Any person has color of title who has occupied a tract of real estate by himself,
 371 or by those under whom he claims, for the term of five years, or who has occupied it for less
 372 time, if he, or those under whom he claims, have at any time during the occupancy with the
 373 knowledge or consent, express or implied, of the real owner made any valuable improvements
 374 on the real estate, or if he or those under whom he claims have at any time during the
 375 occupancy paid the ordinary county taxes on the real estate for any one year, and two years
 376 have elapsed without a repayment by the owner, and the occupancy is continued up to the time
 377 at which the action is brought by which the recovery of the real estate is obtained.

378 (b) The person's rights shall pass to his assignees or representatives.

379 (3) Nothing in this chapter shall be construed to give tenants color of title against their
 380 landlords or give any person a claim under color of title to school [or] and institutional trust
 381 lands as defined in [~~Subsection~~] Section 53C-1-103[~~(6)~~].

381a **§→ Section 9. Effective date.**

381b **If approved by two-thirds of all the members elected to each house, this bill takes effect**
 381c **upon approval by the governor, or the day following the constitutional time limit of Utah**
 381d **Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,**
 381e **the date of veto override. ←§**

Legislative Review Note

as of 1-4-05 1:36 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0041

School and Institutional Trust Lands Management Act Revisions

19-Jan-05

11:41 AM

State Impact

No fiscal impact

Individual and Business Impact

No fiscal impact

Office of the Legislative Fiscal Analyst