

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

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Dmitrich

House Sponsor: Brad King

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

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

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

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

17A-3-805, as last amended by Chapter 299, Laws of Utah 1995

53C-1-103, as repealed and reenacted by Chapter 294, Laws of Utah 1994

53C-2-405, as last amended by Chapter 40, Laws of Utah 2004

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

57-6-4, as last amended by Chapter 299, Laws of Utah 1995

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

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

9-9-402. Definitions.

As used in this part:

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

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

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

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

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

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

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

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

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

17A-2-522. State lands subject.

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

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

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

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

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

- (1) (a) Any district incorporated as provided in this part may:
- (i) have perpetual succession;
 - (ii) sue and be sued in all actions and proceedings and in all courts and tribunals of competent jurisdiction;
 - (iii) adopt a corporate seal and alter it;
 - (iv) take by grant, purchase, bequest, devise, or lease, and hold, enjoy, lease, sell, encumber, alienate, or otherwise dispose of, water, waterworks, water rights, and sources of water supply, and any real and personal property of any kind within or without the district and within and without Utah necessary or convenient to the full exercise of its powers;
 - (v) acquire, construct, or operate, control, and use works, facilities, and means necessary or convenient to the exercise of its powers, both within and without the district and within and

without Utah; and

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

(b) (i) Any district incorporated as provided in this part may have and exercise the power of eminent domain and, in the manner provided by law for the condemnation of private property for public use, take any property necessary to the exercise of the powers granted under this section.

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

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

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

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

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

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

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

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

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

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

(4) Contracts and agreements with the United States of America, and with any water users' association or any other public, cooperative, or private entity from which the district procures water, and bonds payable solely from revenues of the district other than from the proceeds of ad valorem taxes, are not within the limitation established by Subsection (3).

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

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

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

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

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

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

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

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

(c) (i) The district shall:

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

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

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

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

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

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

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

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

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

(B) officers and positions as necessary; and

(C) employees.

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

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

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

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

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

(b) The contracts may provide for:

(i) contributions to be made by each party to them;

(ii) the division and apportionment of the expenses of the acquisitions and operations;

(iii) the division and apportionment of the benefits, the services, and the products from them; and

(iv) an agency to effect the acquisitions and carry on these operations.

(c) The contracts shall provide the powers and the methods of procedure for the agency the method by which the agency may contract.

(d) The contract may contain further covenants and agreements as necessary and convenient to accomplish its purposes.

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

(a) acquire water and water rights within or without Utah;

(b) develop, store, and transport water;

(c) subscribe for, purchase, and acquire stock in canal companies, water companies, and water users' associations;

(d) provide, sell, lease, and deliver water within or outside of the district for municipal and domestic purposes, irrigation, power, milling, manufacturing, mining, and metallurgical and

any and all other beneficial uses;

(e) fix the rates;

(f) acquire, construct, operate, and maintain any works, facilities, improvements, and property that are necessary or convenient; and

(g) in the doing of all of these things:

(i) obligate itself jointly with other persons and corporations, public and private; and

(ii) execute and perform these obligations according to their tenor.

(9) (a) Any district incorporated as provided in this part may invest any surplus money in the district treasury, including any money in any sinking fund established for the purpose of providing for the payment of the principal or interest of any bonded contract or other indebtedness or for any other purpose, not required for immediate necessities of the district, by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act.

(b) The district shall ensure that the sales of any bonds or treasury notes purchased and held are made in season so that the proceeds may be applied to the purposes for which the money, with which the bonds or treasury notes were originally purchased, was placed in the treasury of the district.

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

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

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

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

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

- (1) employ, subject to available funds, clerical and staff personnel, including legal staff;
- (2) conduct surveys, investigations, and research relating to soil erosion, floodwater, nonpoint water pollution, flood control, water pollution, sediment damage, and watershed development;
- (3) devise and implement measures for the prevention of soil erosion, floodwater and sediment damages, nonpoint water pollution, and for the conservation, development, utilization and disposal of water on state or private lands with the consent of the land occupier, and in the case of school and institutional trust lands as defined in ~~[Subsection]~~ Section 53C-1-103~~[(6)]~~, with the consent of the director of the School and Institutional Trust Lands Administration, acting in accordance with Sections 53C-1-102 and 53C-1-303;
- (4) construct, improve, operate, and maintain any structures considered necessary or convenient for the performance of any operation authorized by this part, and acquire property, both real and personal, through purchase, or otherwise, and maintain, improve, and administer such property consistent with the purposes of this part;
- (5) enter into contracts or agreements in the name of the district, and sue and be sued;
- (6) receive funds from any federal or state agency or from any county, city, or other political subdivision within the state or from any private source;
- (7) annually submit to the commission on or before January 30, of each year, a copy of the minutes of each district meeting, a copy of its annual work plan, and an accounting of the district's financial affairs. The accounting shall be prepared by a disinterested person and show the district's debits and credits including accounts payable and accounts receivable, the purpose of each debit, the source of each credit, and the actual cash balance on hand; and
- (8) do all other things necessary or convenient for the efficient and effective administration of the district.

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

53C-1-103. Definitions.

As used in this title:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

land.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The notice shall:

(i) describe the land;

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

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

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

(b) The applications shall be:

(i) submitted in sealed envelopes; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) a revocation of a withdrawal; or

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

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

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

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

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

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

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

Section 9. Effective date.

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