

TRUST LANDS AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill amends provisions related to trust lands.

Highlighted Provisions:

This bill:

- ▶ provides that certain amounts deposited into the Interest and Dividends Account and appropriated from that account shall be used to provide funding for specified purposes related to trust lands;

- ▶ defines terms;

- ▶ modifies the process for determining the membership of the School and Institutional Trust Lands Board of Trustees nominating committee;

- ▶ modifies the duties of the chief executive officer of the School and Institutional Trust Lands Administration; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-16-101, as last amended by Laws of Utah 2010, Chapter 278



28 53A-16-101.5, as last amended by Laws of Utah 2011, Chapter 293

29 53C-1-103, as last amended by Laws of Utah 2005, Chapter 39

30 53C-1-203, as last amended by Laws of Utah 2011, Chapter 247

31 53C-1-303, as last amended by Laws of Utah 2011, Chapter 247



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

34 Section 1. Section 53A-16-101 is amended to read:

35 **53A-16-101. Uniform School Fund -- Contents -- Interest and Dividends Account.**

36 (1) The Uniform School Fund, a special revenue fund within the Education Fund,
37 established by Utah Constitution, Article X, Section 5, consists of:

38 (a) interest and dividends derived from the investment of money in the permanent State
39 School Fund established by Utah Constitution, Article X, Section 5;

40 (b) money transferred to the fund pursuant to Title 67, Chapter 4a, Unclaimed Property
41 Act; and

42 (c) all other constitutional or legislative allocations to the fund, including revenues
43 received by donation.

44 (2) (a) There is created within the Uniform School Fund a restricted account known as
45 the Interest and Dividends Account.

46 (b) The Interest and Dividends Account consists of:

47 (i) interest and dividends derived from the investment of money in the permanent State
48 School Fund referred to in Subsection (1)(a); and

49 (ii) interest on account money.

50 (3) (a) Upon appropriation by the Legislature, money from the Interest and Dividends
51 Account shall be used for the administration of the School LAND Trust Program and the
52 performance of duties related to school trust lands as provided in Section 53A-16-101.5.

53 (b) The Legislature may appropriate any remaining balance for the support of the
54 public education system.

55 Section 2. Section 53A-16-101.5 is amended to read:

56 **53A-16-101.5. School LAND Trust Program -- Purpose -- Distribution of funds --**
57 **School plans for use of funds.**

58 (1) There is established the School LAND (Learning And Nurturing Development)

59 Trust Program for the state's public schools to provide financial resources to enhance or
60 improve student academic achievement and implement a component of the school
61 improvement plan.

62 (2) (a) The program shall be funded each fiscal year:

63 (i) from the Interest and Dividends Account created in Section 53A-16-101; and

64 (ii) in the amount of the sum of the following:

65 (A) the interest and dividends from the investment of money in the permanent State
66 School Fund deposited to the Interest and Dividends Account in the immediately preceding
67 year; and

68 (B) interest accrued on money in the Interest and Dividends Account in the
69 immediately preceding fiscal year.

70 (b) On and after July 1, 2003, the program shall be funded as provided in Subsection
71 (2)(a) up to an amount equal to 2% of the funds provided for the Minimum School Program,
72 pursuant to Title 53A, Chapter 17a, Minimum School Program Act, each fiscal year.

73 (c) (i) The Legislature shall annually allocate, through an appropriation to the State
74 Board of Education, a portion of [~~School LAND Trust Program money for the administration~~
75 ~~of the program.~~] the Interest and Dividends Account created in Section 53A-16-101 to be used
76 for:

77 (A) the administration of the School LAND Trust Program; and

78 (B) the performance of duties related to school trust lands as specified in rules of the
79 State Board of Education.

80 (ii) Any unused balance remaining from an amount appropriated under Subsection
81 (2)(c)(i) shall be deposited in the Interest and Dividends Account for distribution to schools in
82 the School LAND Trust Program.

83 (3) (a) The State Board of Education shall allocate the money referred to in Subsection
84 (2) annually for the fiscal year beginning July 1, 2000, and for each fiscal year thereafter as
85 follows:

86 (i) school districts and the charter schools combined shall receive 10% of the funds on
87 an equal basis; and

88 (ii) the remaining 90% of the funds shall be distributed on a per student basis, with
89 each school district and charter school receiving its allocation based on the number of students

90 in the school district and charter school as compared to the state total.

91 (b) A school district shall distribute its allocation under Subsection (3)(a) to each school
92 within the district on an equal per student basis.

93 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
94 State Board of Education may make rules regarding the time and manner in which the student
95 count shall be made for allocation of the money.

96 (4) (a) Except as provided in Subsection (7), in order to receive its allocation under
97 Subsection (3):

98 (i) a school shall have established a school community council in accordance with
99 Section 53A-1a-108; and

100 (ii) the school's principal shall provide a signed, written assurance in accordance with
101 rules of the State Board of Education that:

102 (A) the membership of the school community council is consistent with the
103 membership requirements specified in Section 53A-1a-108; and

104 (B) the members were elected or appointed consistent with selection requirements
105 specified in 53A-1a-108.

106 (b) At the direction of the Legislative Audit Subcommittee, the legislative auditor
107 general shall:

108 (i) audit a sample of schools to determine compliance with requirements specified in
109 Section 53A-1a-108 for school community council membership and the election or
110 appointment of school community council members; and

111 (ii) submit an audit report to the Legislative Audit Subcommittee.

112 (c) The Legislative Audit Subcommittee shall forward the audit report to the Public
113 Education Appropriations Subcommittee and the State Board of Education.

114 (d) (i) The State Board of Education may recommend that all or a portion of a school's
115 allocation of School LAND Trust Program money under Subsection (3) be reduced or
116 eliminated for a fiscal year if the school has failed to comply with requirements specified in
117 Section 53A-1a-108 for school community council membership or the election or appointment
118 of school community council members.

119 (ii) The State Board of Education shall report to the Public Education Appropriations
120 Subcommittee on the board's action or decision regarding a school identified in an audit report

121 as being not in compliance with requirements specified in Section 53A-1a-108 for school
122 community council membership or the election or appointment of school community council
123 members.

124 (5) (a) The school community council or its subcommittee shall create a program to use
125 its allocation under Subsection (3) to implement a component of the school's improvement
126 plan, including:

- 127 (i) the school's identified most critical academic needs;
- 128 (ii) a recommended course of action to meet the identified academic needs;
- 129 (iii) a specific listing of any programs, practices, materials, or equipment which the
130 school will need to implement a component of its school improvement plan to have a direct
131 impact on the instruction of students and result in measurable increased student performance;
- 132 and

133 (iv) how the school intends to spend its allocation of funds under this section to
134 enhance or improve academic excellence at the school.

135 (b) The school may develop a multiyear program, but the program shall be approved by
136 the school community council and the local school board of the district in which the school is
137 located annually and as a prerequisite to receiving program funds allocated under this section.

138 (c) (i) A school community council shall consider the approval of a plan for the use of
139 School LAND Trust Program money in a meeting of the school community council at which a
140 quorum is present.

141 (ii) If a majority of the quorum votes to approve a plan for the use of School LAND
142 Trust Program money, the plan is approved.

143 (d) A school community council shall:

144 (i) submit a plan for the use of School LAND Trust Program money that is approved in
145 accordance with Subsection (5)(c) to the local school board for the local school board's
146 approval; and

147 (ii) include with the plan a report noting the number of school community council
148 members who voted for or against the approval of the plan and the number of members who
149 were absent for the vote.

150 (e) (i) A local school board may approve or disapprove a plan for the use of School
151 LAND Trust Program money.

152 (ii) If a local school board disapproves a plan for the use of School LAND Trust
153 Program money, the local school board shall provide a written explanation of why the plan was
154 disapproved and request the school community council who submitted the plan to revise the
155 plan.

156 (iii) The school community council shall submit a revised plan to the local school
157 board for approval.

158 (6) (a) Each school shall:

159 (i) implement the program as approved by the school community council and approved
160 by the local school board;

161 (ii) provide ongoing support for the council's or its subcommittee's program; and

162 (iii) meet school board reporting requirements regarding financial and performance
163 accountability of the program.

164 (b) (i) Each school through its council or its subcommittee shall prepare and present an
165 annual report of the program to its local school board at the end of the school year.

166 (ii) The report shall detail the use of program funds received by the school under this
167 section and an assessment of the results obtained from the use of the funds.

168 (iii) A summary of the report shall be sent to households in accordance with the
169 provisions under Subsection 53A-1a-108(7).

170 (7) (a) The governing board of a charter school shall prepare a plan for the use of
171 School LAND Trust Program money that includes the elements listed in Subsection (5).

172 (b) The plan shall be subject to approval by the entity that authorized the establishment
173 of the charter school.

174 (8) (a) A school community council and a governing board of a charter school may not
175 be required to:

176 (i) send a letter to legislators or other elected officials on the school's use of School
177 LAND Trust Program money as a condition of receiving the money; or

178 (ii) report to the State Board of Education or any local school board on whether any
179 letters were sent to legislators or other elected officials on the school's use of School LAND
180 Trust Program money.

181 (b) Subsection (8)(a)(i) does not apply to the annual report to the local school board
182 required by Subsection (6)(b).

183 Section 3. Section **53C-1-103** is amended to read:

184 **53C-1-103. Definitions.**

185 As used in this title:

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

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

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

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

192 (5) "Nominating committee" means the committee that nominates candidates for
193 positions and vacancies on the board.

194 (6) "Policies" means statements applying to the administration that broadly prescribe a
195 future course of action and guiding principles.

196 (7) "Primary beneficiary representative" means the State Board of Education acting as
197 representative on behalf of the following trusts:

198 (a) the trust established for common schools;

199 (b) the trust established for ~~H~~→ [persons who are] schools for the ←~~H~~ blind; and

200 (c) the trust established for ~~H~~→ [persons who are] schools for the ←~~H~~ deaf.

201 [(7)] (8) "School and institutional trust lands" or "trust lands" means those properties
202 granted by the United States in the Utah Enabling Act to the state in trust, and other lands
203 transferred to the trust, which must be managed for the benefit of:

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

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

207 Section 4. Section **53C-1-203** is amended to read:

208 **53C-1-203. Board of trustees nominating committee -- Composition --**

209 **Responsibilities -- Per diem and expenses.**

210 (1) There is established an 11 member board of trustees nominating committee.

211 (2) (a) The State Board of Education shall appoint five members to the nominating
212 committee from different geographical areas of the state.

213 (b) The governor shall appoint five members to the nominating committee on or before

214 the December 1 of the year preceding the vacancy on the nominating committee as follows:

215 (i) one individual from a nomination list of at least two names of individuals
216 knowledgeable about institutional trust lands submitted on or before the October 1 of the year
217 preceding the vacancy on the nominating committee by the University of Utah and Utah State
218 University on an alternating basis every four years;

219 (ii) one individual from a nomination list of at least two names submitted by the
220 [~~livestock industry~~] Utah Farm Bureau in consultation with the Utah Cattleman's Association
221 and the Utah Wool Growers' Association on or before the October 1 of the year preceding the
222 vacancy on the nominating committee;

223 (iii) one individual from a nomination list of at least two names submitted by the Utah
224 Petroleum Association on or before the October 1 of the year preceding the vacancy on the
225 nominating committee;

226 (iv) one individual from a nomination list of at least two names submitted by the Utah
227 Mining Association on or before the October 1 of the year preceding the vacancy on the
228 nominating committee; and

229 (v) one individual from a nomination list of at least two names submitted by the
230 executive director of the Department of Natural Resources after consultation with statewide
231 wildlife and conservation organizations on or before the October 1 of the year preceding the
232 vacancy on the nominating committee.

233 (c) The president of the Utah Association of Counties shall designate the chair of the
234 Public Lands Steering Committee, who must be an elected county commissioner or councilor,
235 to serve as the eleventh member of the nominating committee.

236 (3) (a) Except as required by Subsection (3)(b), each member shall serve a four-year
237 term.

238 (b) Notwithstanding the requirements of Subsection (3)(a), the state board and the
239 governor shall, at the time of appointment or reappointment, adjust the length of terms to
240 ensure that the terms of committee members are staggered so that approximately half of the
241 committee is appointed every two years.

242 (c) When a vacancy occurs in the membership for any reason, the replacement shall be
243 appointed for the unexpired term.

244 (4) The nominating committee shall select a chair and vice chair from its membership

245 by majority vote.

246 (5) (a) The nominating committee shall nominate at least two candidates for each
247 position or vacancy which occurs on the board of trustees except for the governor's appointee
248 under Subsection 53C-1-202(5).

249 (b) The nominations shall be by majority vote of the committee.

250 (6) A member may not receive compensation or benefits for the member's service, but
251 may receive per diem and travel expenses in accordance with:

252 (a) Section 63A-3-106;

253 (b) Section 63A-3-107; and

254 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
255 63A-3-107.

256 Section 5. Section **53C-1-303** is amended to read:

257 **53C-1-303. Responsibilities of director -- Budget review -- Legal counsel --**
258 **Contract for services.**

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

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

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

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

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

267 (e) submit to the board for public inspection an annual management budget and
268 financial plan for operations of the administration and, after approval by the board, submit the
269 budget to the governor;

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

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

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

275 (i) notify the primary beneficiary representative's designee regarding the trusts listed in

276 Subsection 53C-1-103(7) on major items that the director knows ~~H→~~ [or ought to know] ~~←H~~
 276a may be

277 useful to the primary beneficiary representative's designee in protecting beneficiary rights;

278 (j) permit the primary beneficiary representative's designee regarding a trust listed in

279 Subsection 53C-1-103(7) reasonable access to inspect records, documents, and other trust

280 property pertaining to that trust, provided that the primary beneficiary representative's designee

281 shall maintain confidentiality if confidentiality is required of the director;

282 ~~(i)~~ (k) maintain appropriate records of trust activities to enable auditors appointed by
 283 appropriate state agencies or the board to conduct periodic audits of trust activities;

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

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

290 ~~(l)~~ (n) respond in writing within a reasonable time to a request by the board or the
 291 primary beneficiary representative's designee regarding a trust listed in Subsection
 292 53C-1-103(7) for responses to questions on policies and practices affecting the management of
 293 the trust.

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

297 (3) The director may:

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

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

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

303 (d) contract with any public or private entity to make improvements to or upon trust

304 lands and to carry out any of the responsibilities of the office, so long as the contract requires

305 strict adherence to trust management principles, applicable law and regulation, and is subject to

306 immediate suspension or termination for cause; and

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

309 (4) Any application or bid required for the lease, permitting, or sale of lands in a
310 competitive process or any request for review pursuant to Section 53C-1-304 shall be
311 considered filed or made on the date received by the appropriate administrative office, whether
312 transmitted by United States mail or in any other manner.

Legislative Review Note
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Office of Legislative Research and General Counsel