

## HB0367S02 compared with HB0367S01

~~text~~ shows text that was in HB0367S01 but was deleted in HB0367S02.

text shows text that was not in HB0367S01 but was inserted into HB0367S02.

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Senator Margaret Dayton proposes the following substitute bill:

### TRUST LANDS AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael E. Noel**

Senate Sponsor: Margaret Dayton

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#### 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;
- ▶ establishes the School Children's Trust Section within the State Office of Education to perform certain duties related to trust lands;
- ▶ modifies the process for determining the membership of the School and Institutional Trust Lands Board of Trustees nominating committee;

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- ▶ 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

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

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

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

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

ENACTS:

**53A-16-101.6**, Utah Code Annotated 1953

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

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

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

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

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

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

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

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

(b) The Interest and Dividends Account consists of:

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

(ii) interest on account money.

(3) (a) Upon appropriation by the Legislature, money from the Interest and Dividends Account shall be used for:

(i) the administration of the School LAND Trust Program as provided in Section 53A-16-101.5[-]; and

(ii) the performance of duties described in Section 53A-16-101.6.

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

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

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

(1) There is established the School LAND (Learning And Nurturing Development) Trust Program for the state's public schools to provide financial resources to enhance or improve student academic achievement and implement a component of the school improvement plan.

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

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

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

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

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

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

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

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for:

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

(B) the performance of duties described in Section 53A-16-101.6.

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

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

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

(ii) the remaining 90% of the funds shall be distributed on a per student basis, with each school district and charter school receiving its allocation based on the number of students in the school district and charter school as compared to the state total.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The State Board of Education shall report to the Public Education Appropriations Subcommittee on the board's action or decision regarding a school identified in an audit report as being not in compliance with requirements specified in Section 53A-1a-108 for school community council membership or the election or appointment of school community council members.

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

(i) the school's identified most critical academic needs;

(ii) a recommended course of action to meet the identified academic needs;

(iii) a specific listing of any programs, practices, materials, or equipment which the school will need to implement a component of its school improvement plan to have a direct impact on the instruction of students and result in measurable increased student performance; and

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

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

(c) (i) A school community council shall consider the approval of a plan for the use of

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School LAND Trust Program money in a meeting of the school community council at which a quorum is present.

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

(d) A school community council shall:

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

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

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

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

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

(6) (a) Each school shall:

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. Section **53A-16-101.6** is enacted to read:

### **53A-16-101.6. Creation of School Children's Trust Section -- Duties.**

(1) As used in this section:

(a) "School and institutional trust lands" is as defined in Section 53C-1-103.

(b) "Section" means the School Children's Trust Section created in this section.

(c) "Trust" means:

(i) the School LAND Trust Program created in Section 53A-16-101.5; and

(ii) the lands and funds associated with the trusts described in Subsection 53C-1-103(7).

(2) There is established a School Children's Trust Section within the State Office of Education.

(3) (a) The section shall have a director.

(b) The director shall have professional qualifications and expertise in the areas generating revenue to the trust, including:

(i) economics;

(ii) energy development;

(iii) finance;

(iv) public education;

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(v) real estate;

(vi) renewable resources; and

(vii) trust law.

(c) The director shall be appointed as provided in this Subsection (3).

(~~fb~~d) The School and Institutional Trust Lands Board of Trustees nominating committee shall submit to the State Board of Education the name of one person to serve as director.

(~~fe~~e) The State Board of Education may:

(i) appoint the person described in Subsection (3)(~~fb~~d) to serve as director; or

(ii) deny the appointment of the person described in Subsection (3)(~~fb~~d) to serve as director.

(~~fd~~f) If the State Board of Education denies an appointment under this Subsection (3):

(i) the State Board of Education shall provide in writing one or more reasons for the denial to the School and Institutional Trust Lands Board of Trustees nominating committee; and

(ii) the School and Institutional Trust Lands Board of Trustees nominating committee and the State Board of Education shall follow the procedures and requirements of this Subsection (3) until the State Board of Education appoints a director.

(4) The director shall report to the state superintendent or the state superintendent's designee.

~~{ (5) In appointing the director, the state superintendent shall ensure that the director has professional qualifications and expertise in the areas generating revenue to the trust, including:~~

~~— (a) economics;~~

~~— (b) energy development;~~

~~— (c) finance;~~

~~— (d) public education;~~

~~— (e) real estate;~~

~~— (f) renewable resources; and~~

~~— (g) trust law.~~

~~‡ (~~f6~~5) The section shall have a staff.~~

(~~f7~~6) The section shall protect current and future beneficiary rights and interests in



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the trust consistent with the state's perpetual obligations under:

(a) the Utah Enabling Act;

(b) the Utah Constitution;

(c) state statute; and

(d) standard trust principles described in Section 53C-1-102.

~~(8)7~~ The section shall promote productive use of school and institutional trust lands.

~~(9)8~~ The section shall provide representation, advocacy, and input:

(a) on behalf of current and future beneficiaries of the trust, school community

councils, schools, and school districts;

(b) on federal, state, and local land decisions and policies that affect the trust; and

(c) to:

(i) the School and Institutional Trust Lands Administration;

(ii) the School and Institutional Trust Lands Board of Trustees;

(iii) the Legislature;

(iv) the state treasurer;

(v) the attorney general;

(vi) the public; and

(vii) other entities as determined by the section.

~~(10)9~~ The section shall provide independent oversight on the prudent and profitable management of the trust and report annually to the State Board of Education and the Legislature ~~on the prudent and profitable management of the trust~~.

~~(11)10~~ The section shall provide information requested by a person or entity described in Subsections ~~(9)8~~(c)(i) through (v).

Section 4. 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.

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

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

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

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

(a) the trust established for common schools;

(b) the trust established for schools for the blind; and

(c) the trust established for schools for the deaf.

~~(7)~~ (8) "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 5. Section **53C-1-203** is amended to read:

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

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

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

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

(b) The governor shall appoint five members to the nominating committee on or before the December 1 of the year preceding the vacancy on the nominating committee as follows:

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

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

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vacancy on the nominating committee;

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

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

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

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

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

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

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

(4) The nominating committee shall select a chair and vice chair from its membership by majority vote.

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

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

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

(a) Section 63A-3-106;

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

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

Section 6. Section **53C-1-303** is amended to read:

**53C-1-303. Responsibilities of director -- Budget review -- Legal counsel --**

### **Contract for services.**

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

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

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

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

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

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

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

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

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

(i) notify the primary beneficiary representative's designee regarding the trusts listed in Subsection 53C-1-103(7) on major items that the director knows may be useful to the primary beneficiary representative's designee in protecting beneficiary rights;

(j) permit the primary beneficiary representative's designee regarding a trust listed in Subsection 53C-1-103(7) reasonable access to inspect records, documents, and other trust property pertaining to that trust, provided that the primary beneficiary representative's designee shall maintain confidentiality if confidentiality is required of the director;

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

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

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

~~(t)~~ (n) respond in writing within a reasonable time to a request by the board or the primary beneficiary representative's designee regarding a trust listed in Subsection 53C-1-103(7) for responses to questions on policies and practices affecting the management of the trust.

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

(3) The director may:

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

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

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

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

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

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