

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

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;

- ▶ 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:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **53A-16-101**, as last amended by Laws of Utah 2010, Chapter 278

30 **53A-16-101.5**, as last amended by Laws of Utah 2011, Chapter 293

31 **53C-1-103**, as last amended by Laws of Utah 2005, Chapter 39

32 **53C-1-203**, as last amended by Laws of Utah 2011, Chapter 247

33 **53C-1-303**, as last amended by Laws of Utah 2011, Chapter 247

34 ENACTS:

35 **53A-16-101.6**, Utah Code Annotated 1953



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

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

39 **53A-16-101. Uniform School Fund -- Contents -- Interest and Dividends Account.**

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

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

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

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

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

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

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

53 (ii) interest on account money.

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

56 (i) the administration of the School LAND Trust Program as provided in Section

57 53A-16-101.5[~~;~~]; and

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

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

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

62 **53A-16-101.5. School LAND Trust Program -- Purpose -- Distribution of funds --**
63 **School plans for use of funds.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

148 (d) A school community council shall:

149 (i) submit a plan for the use of School LAND Trust Program money that is approved in

150 accordance with Subsection (5)(c) to the local school board for the local school board's
151 approval; and

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

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

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

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

163 (6) (a) Each school shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

189 **53A-16-101.6. Creation of School Children's Trust Section -- Duties.**

190 (1) As used in this section:

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

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

193 (c) "Trust" means:

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

195 (ii) the lands and funds associated with the trusts described in Subsection
196 53C-1-103(7).

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

199 (3) (a) The section shall have a director to be appointed as provided in this Subsection
200 (3).

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

203 (c) The State Board of Education may:

204 (i) appoint the person described in Subsection (3)(b) to serve as director; or

205 (ii) deny the appointment of the person described in Subsection (3)(b) to serve as
206 director.

207 (d) If the State Board of Education denies an appointment under this Subsection (3):

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

211 (ii) the School and Institutional Trust Lands Board of Trustees nominating committee

212 and the State Board of Education shall follow the procedures and requirements of this
213 Subsection (3) until the State Board of Education appoints a director.

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

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

- 218 (a) economics;
- 219 (b) energy development;
- 220 (c) finance;
- 221 (d) public education;
- 222 (e) real estate;
- 223 (f) renewable resources; and
- 224 (g) trust law.

225 (6) The section shall have a staff.

226 (7) The section shall protect current and future beneficiary rights and interests in the
227 trust consistent with the state's perpetual obligations under:

- 228 (a) the Utah Enabling Act;
- 229 (b) the Utah Constitution;
- 230 (c) state statute; and
- 231 (d) standard trust principles described in Section 53C-1-102.

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

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

- 234 (a) on behalf of current and future beneficiaries of the trust, school community
235 councils, schools, and school districts;
- 236 (b) on federal, state, and local land decisions and policies that affect the trust; and
- 237 (c) to:
 - 238 (i) the School and Institutional Trust Lands Administration;
 - 239 (ii) the School and Institutional Trust Lands Board of Trustees;
 - 240 (iii) the Legislature;
 - 241 (iv) the state treasurer;
 - 242 (v) the attorney general;

243 (vi) the public; and

244 (vii) other entities as determined by the section.

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

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

249 Section 4. Section **53C-1-103** is amended to read:

250 **53C-1-103. Definitions.**

251 As used in this title:

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

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

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

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

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

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

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

264 (a) the trust established for common schools;

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

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

267 [~~7~~] (8) "School and institutional trust lands" or "trust lands" means those properties
268 granted by the United States in the Utah Enabling Act to the state in trust, and other lands
269 transferred to the trust, which must be managed for the benefit of:

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

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

273 Section 5. Section **53C-1-203** is amended to read:

274 **53C-1-203. Board of trustees nominating committee -- Composition --**
275 **Responsibilities -- Per diem and expenses.**

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

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

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

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

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

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

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

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

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

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

304 (b) Notwithstanding the requirements of Subsection (3)(a), the state board and the

305 governor shall, at the time of appointment or reappointment, adjust the length of terms to
306 ensure that the terms of committee members are staggered so that approximately half of the
307 committee is appointed every two years.

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

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

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

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

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

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

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

320 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
321 63A-3-107.

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

323 **53C-1-303. Responsibilities of director -- Budget review -- Legal counsel --**
324 **Contract for services.**

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

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

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

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

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

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

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

337 (g) establish job descriptions and employ, within the limitation of the budget, staff

338 necessary to accomplish the purposes of the office subject to Section 53C-1-201;

339 (h) establish, in accordance with generally accepted principles of fund accounting, a

340 system to identify and account for the assets and vested interests of each beneficiary;

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

342 Subsection 53C-1-103(7) on major items that the director knows may be useful to the primary

343 beneficiary representative's designee in protecting beneficiary rights;

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

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

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

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

348 [~~(i)~~] (k) maintain appropriate records of trust activities to enable auditors appointed by

349 appropriate state agencies or the board to conduct periodic audits of trust activities;

350 [~~(j)~~] (l) provide that all leases, contracts, and agreements be submitted to legal counsel

351 for review of compliance with applicable law and fiduciary duties prior to execution and utilize

352 the services of the attorney general as provided in Section 53C-1-305;

353 [~~(k)~~] (m) keep the board, beneficiaries, governor, Legislature, and the public informed

354 about the work of the director and administration by reporting to the board in a public meeting

355 at least once during each calendar quarter; and

356 [~~(l)~~] (n) respond in writing within a reasonable time to a request by the board or the

357 primary beneficiary representative's designee regarding a trust listed in Subsection

358 53C-1-103(7) for responses to questions on policies and practices affecting the management of

359 the trust.

360 (2) The administration shall be the named party in substitution of the Division of State

361 Lands and Forestry or its predecessor agencies, with respect to all documents affecting trust

362 lands from the effective date of this act.

363 (3) The director may:

364 (a) with the consent of the state risk manager and the board, manage lands or interests

365 in lands held by any other public or private party pursuant to policies established by the board

366 and may make rules to implement these board policies;

- 367 (b) sue or be sued as the director of school and institutional trust lands;
- 368 (c) contract with other public agencies for personnel management services;
- 369 (d) contract with any public or private entity to make improvements to or upon trust
- 370 lands and to carry out any of the responsibilities of the office, so long as the contract requires
- 371 strict adherence to trust management principles, applicable law and regulation, and is subject to
- 372 immediate suspension or termination for cause; and
- 373 (e) with the approval of the board enter into joint ventures and other business
- 374 arrangements consistent with the purposes of the trust.
- 375 (4) Any application or bid required for the lease, permitting, or sale of lands in a
- 376 competitive process or any request for review pursuant to Section 53C-1-304 shall be
- 377 considered filed or made on the date received by the appropriate administrative office, whether
- 378 transmitted by United States mail or in any other manner.