

RISK MANAGEMENT FOR INDEPENDENT ENTITIES

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill modifies the Independent Entities Code by amending requirements for a state independent entity to participate in coverage under the Risk Management Fund.

Highlighted Provisions:

This bill:

- ▶ modifies the list of state independent entities included in the definition of "independent entity" in the Independent Entities Code;
- ▶ provides that an independent entity is not eligible for coverage by the Division of Risk Management unless the entity's authorizing statute specifically authorizes coverage;
- ▶ modifies the authorizing statutes of certain independent entities to allow for participation in risk-management coverage;
- ▶ provides that the state risk manager may require participating independent entities to obtain additional insurance and comply with other loss-prevention measures for a commercial activity; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

30 53C-1-201 (Effective 07/01/13), as last amended by Laws of Utah 2011, Chapter 353

31 53C-1-201 (Effective 05/01/13) (Sup 07/01/13), as last amended by Laws of Utah

32 2012, Chapter 347

33 63C-7-210 (Effective 05/01/13), as last amended by Laws of Utah 2012, Chapter 347

34 63E-1-102, as last amended by Laws of Utah 2012, Chapters 212 and 369

35 63E-2-107, as enacted by Laws of Utah 2001, Chapter 201

36 63H-4-108 (Effective 05/01/13), as last amended by Laws of Utah 2012, Chapter 347

37 ENACTS:

38 63E-1-304, Utah Code Annotated 1953



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

41 Section 1. Section 53C-1-201 (Effective 07/01/13) is amended to read:

42 53C-1-201 (Effective 07/01/13). **Creation of administration -- Purpose -- Director**
43 **-- Participation in Risk Management Fund.**

44 (1) (a) There is established within state government the School and Institutional Trust
45 Lands Administration.

46 (b) The administration shall manage all school and institutional trust lands and assets
47 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation
48 of Revenue from Trust Lands, and Sections 51-7a-201 and 51-7a-202.

49 (2) The administration is an independent state agency and not a division of any other
50 department.

51 (3) (a) It is subject to the usual legislative and executive department controls except as
52 provided in this Subsection (3).

53 (b) (i) The director may make rules as approved by the board that allow the
54 administration to classify a business proposal submitted to the administration as protected
55 under Section 63G-2-305, for as long as is necessary to evaluate the proposal.

56 (ii) The administration shall return the proposal to the party who submitted the
57 proposal, and incur no further duties under Title 63G, Chapter 2, Government Records Access

58 and Management Act, if the administration determines not to proceed with the proposal.

59 (iii) The administration shall classify the proposal pursuant to law if it decides to
60 proceed with the proposal.

61 (iv) Section 63G-2-403 does not apply during the review period.

62 (c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah
63 Administrative Rulemaking Act, except that the administration is not subject to Subsections
64 63G-3-301(6) and (7) and Section 63G-3-601, and the director, with the board's approval, may
65 establish a procedure for the expedited approval of rules, based on written findings by the
66 director showing:

67 (i) the changes in business opportunities affecting the assets of the trust;

68 (ii) the specific business opportunity arising out of those changes which may be lost
69 without the rule or changes to the rule;

70 (iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without
71 causing the loss of the specific opportunity;

72 (iv) approval by at least five board members; and

73 (v) that the director has filed a copy of the rule and a rule analysis, stating the specific
74 reasons and justifications for its findings, with the Division of Administrative Rules and
75 notified interested parties as provided in Subsection 63G-3-301(10).

76 (d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel
77 Management Act, except as provided in this Subsection (3)(d).

78 (ii) The board may approve, upon recommendation of the director, that exemption for
79 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable
80 the administration to efficiently fulfill its responsibilities under the law. The director shall
81 consult with the executive director of the Department of Human Resource Management prior
82 to making such a recommendation.

83 (iii) The positions of director, deputy director, associate director, assistant director,
84 legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs
85 officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

86 (iv) Salaries for exempted positions, except for the director, shall be set by the director,
87 after consultation with the executive director of the Department of Human Resource
88 Management, within ranges approved by the board. The board and director shall consider
89 salaries for similar positions in private enterprise and other public employment when setting
90 salary ranges.

91 (v) The board may create an annual incentive and bonus plan for the director and other
92 administration employees designated by the board, based upon the attainment of financial
93 performance goals and other measurable criteria defined and budgeted in advance by the board.

94 (e) The administration shall comply with Title 63G, Chapter 6a, Utah Procurement
95 Code, except where the board approves, upon recommendation of the director, exemption from
96 the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3,
97 Utah Administrative Rulemaking Act, for procurement, which enable the administration to
98 efficiently fulfill its responsibilities under the law.

99 (f) (i) Except as provided in Subsection (3)(f)(ii), the administration is not subject to
100 the fee agency requirements of Section 63J-1-504.

101 (ii) The following fees of the administration are subject to the requirements of Section
102 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change,
103 reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral
104 assignment, electronic payment, and processing.

105 (4) The administration is managed by a director of school and institutional trust lands
106 appointed by a majority vote of the board of trustees with the consent of the governor.

107 (5) (a) The board of trustees shall provide policies for the management of the
108 administration and for the management of trust lands and assets.

109 (b) The board shall provide policies for the ownership and control of Native American
110 remains that are discovered or excavated on school and institutional trust lands in consultation
111 with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4,
112 Native American Grave Protection and Repatriation Act. The director may make rules in
113 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement

114 policies provided by the board regarding Native American remains.

115 (6) In connection with joint ventures and other transactions involving trust lands and
116 minerals approved under Sections 53C-1-303 and 53C-2-401, the administration, with board
117 approval, may become a member of a limited liability company under Title 48, Chapter 3, Utah
118 Revised Uniform Limited Liability Company Act, and is considered a person under Section
119 48-3-102.

120 (7) Subject to the requirements of Subsection 63E-1-304(2), the administration may
121 participate in coverage under the Risk Management Fund created by Section 63A-4-201.

122 Section 2. Section **53C-1-201 (Effective 05/01/13) (Sup 07/01/13)** is amended to read:

123 **53C-1-201 (Effective 05/01/13) (Sup 07/01/13). Creation of administration --**

124 **Purpose -- Director -- Participation in Risk Management Fund.**

125 (1) (a) There is established within state government the School and Institutional Trust
126 Lands Administration.

127 (b) The administration shall manage all school and institutional trust lands and assets
128 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation
129 of Revenue from Trust Lands, and Sections 51-7a-201 and 51-7a-202.

130 (2) The administration is an independent state agency and not a division of any other
131 department.

132 (3) (a) It is subject to the usual legislative and executive department controls except as
133 provided in this Subsection (3).

134 (b) (i) The director may make rules as approved by the board that allow the
135 administration to classify a business proposal submitted to the administration as protected
136 under Section 63G-2-305, for as long as is necessary to evaluate the proposal.

137 (ii) The administration shall return the proposal to the party who submitted the
138 proposal, and incur no further duties under Title 63G, Chapter 2, Government Records Access
139 and Management Act, if the administration determines not to proceed with the proposal.

140 (iii) The administration shall classify the proposal pursuant to law if it decides to
141 proceed with the proposal.

142 (iv) Section 63G-2-403 does not apply during the review period.

143 (c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah
144 Administrative Rulemaking Act, except that the administration is not subject to Subsections
145 63G-3-301(6) and (7) and Section 63G-3-601, and the director, with the board's approval, may
146 establish a procedure for the expedited approval of rules, based on written findings by the
147 director showing:

- 148 (i) the changes in business opportunities affecting the assets of the trust;
- 149 (ii) the specific business opportunity arising out of those changes which may be lost
150 without the rule or changes to the rule;
- 151 (iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without
152 causing the loss of the specific opportunity;
- 153 (iv) approval by at least five board members; and
- 154 (v) that the director has filed a copy of the rule and a rule analysis, stating the specific
155 reasons and justifications for its findings, with the Division of Administrative Rules and
156 notified interested parties as provided in Subsection 63G-3-301(10).

157 (d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel
158 Management Act, except as provided in this Subsection (3)(d).

159 (ii) The board may approve, upon recommendation of the director, that exemption for
160 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable
161 the administration to efficiently fulfill its responsibilities under the law. The director shall
162 consult with the executive director of the Department of Human Resource Management prior
163 to making such a recommendation.

164 (iii) The positions of director, deputy director, associate director, assistant director,
165 legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs
166 officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

167 (iv) Salaries for exempted positions, except for the director, shall be set by the director,
168 after consultation with the executive director of the Department of Human Resource
169 Management, within ranges approved by the board. The board and director shall consider

170 salaries for similar positions in private enterprise and other public employment when setting
171 salary ranges.

172 (v) The board may create an annual incentive and bonus plan for the director and other
173 administration employees designated by the board, based upon the attainment of financial
174 performance goals and other measurable criteria defined and budgeted in advance by the board.

175 (e) The administration shall comply with Title 63G, Chapter 6a, Utah Procurement
176 Code, except where the board approves, upon recommendation of the director, exemption from
177 the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3,
178 Utah Administrative Rulemaking Act, for procurement, which enable the administration to
179 efficiently fulfill its responsibilities under the law.

180 (f) (i) Except as provided in Subsection (3)(f)(ii), the administration is not subject to
181 the fee agency requirements of Section 63J-1-504.

182 (ii) The following fees of the administration are subject to the requirements of Section
183 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change,
184 reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral
185 assignment, electronic payment, and processing.

186 (4) The administration is managed by a director of school and institutional trust lands
187 appointed by a majority vote of the board of trustees with the consent of the governor.

188 (5) (a) The board of trustees shall provide policies for the management of the
189 administration and for the management of trust lands and assets.

190 (b) The board shall provide policies for the ownership and control of Native American
191 remains that are discovered or excavated on school and institutional trust lands in consultation
192 with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4,
193 Native American Grave Protection and Repatriation Act. The director may make rules in
194 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement
195 policies provided by the board regarding Native American remains.

196 (6) In connection with joint ventures and other transactions involving trust lands and
197 minerals approved under Sections 53C-1-303 and 53C-2-401, the administration, with board

198 approval, may become a member of a limited liability company under Title 48, Chapter 2c,
199 Utah Revised Limited Liability Company Act, and is considered a person under Section
200 48-2c-102.

201 (7) Subject to the requirements of Subsection 63E-1-304(2), the administration may
202 participate in coverage under the Risk Management Fund created by Section 63A-4-201.

203 Section 3. Section **63C-7-210 (Effective 05/01/13)** is amended to read:

204 **63C-7-210 (Effective 05/01/13). Relation to certain acts -- Participation in Risk**
205 **Management Fund.**

206 (1) The Utah Communications Agency Network is exempt from:

207 (a) Title 63J, Chapter 1, Budgetary Procedures Act;

208 (b) Title 63A, Utah Administrative Services Code, except as provided in Section
209 63A-4-205.5;

210 (c) Title 63G, Chapter 6a, Utah Procurement Code;

211 (d) Title 63G, Chapter 4, Administrative Procedures Act; and

212 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

213 (2) The board shall adopt budgetary procedures, accounting, procurement, and
214 personnel policies substantially similar to those from which they have been exempted in
215 Subsection (1).

216 (3) Subject to the requirements of Subsection 63E-1-304(2), the administration may
217 participate in coverage under the Risk Management Fund created by Section 63A-4-201.

218 Section 4. Section **63E-1-102** is amended to read:

219 **63E-1-102. Definitions -- List of Independent Entities.**

220 As used in this title:

221 (1) "Authorizing statute" means the statute creating an entity as an independent entity.

222 (2) "Committee" means the Retirement and Independent Entities Committee created
223 [in] by Section 63E-1-201.

224 (3) "Independent corporation" means a corporation incorporated in accordance with
225 Chapter 2, Independent Corporations Act.

226 (4) (a) "Independent entity" means an entity having a public purpose relating to the
227 state or its citizens that is individually created by the state or is given by the state the right to
228 exist and conduct its affairs as an:

229 (i) independent state agency; or

230 (ii) independent corporation.

231 (b) "Independent entity" includes the:

232 (i) Utah Dairy Commission created [in Title 4, Chapter 22, Dairy Promotion Act] by
233 Section 4-22-2;

234 (ii) Heber Valley Historic Railroad Authority created [in Title 63H, Chapter 4, Heber
235 Valley Historic Railroad Authority] by Section 63H-4-102;

236 (iii) Utah State Railroad Museum Authority created [in Title 63H, Chapter 5, Utah
237 State Railroad Museum Authority] by Section 63H-5-102;

238 (iv) Utah Science Center Authority created [in Title 63H, Chapter 3, Utah Science
239 Center Authority] by Section 63H-3-103;

240 (v) Utah Housing Corporation created [in Title 35A, Chapter 8, Part 7, Utah Housing
241 Corporation Act] by Section 35A-8-704;

242 (vi) Utah State Fair Corporation created [in Title 63H, Chapter 6, Utah State Fair
243 Corporation Act] by Section 63H-6-103;

244 (vii) Workers' Compensation Fund created [in Title 31A, Chapter 33, Workers'
245 Compensation Fund] by Section 31A-33-102;

246 (viii) Utah State Retirement Office created [in Title 49, Chapter 11, Utah State
247 Retirement Systems Administration] by Section 49-11-201;

248 (ix) School and Institutional Trust Lands Administration created [in Title 53C, Chapter
249 1, Part 2, School and Institutional Trust Lands Administration] by Section 53C-1-201;

250 (x) Utah Communications Agency Network created [in Title 63C, Chapter 7, Utah
251 Communications Agency Network Act] by Section 63C-7-201;

252 (xi) Utah [Generated Renewable Energy Electricity Network Authority] Energy
253 Infrastructure Authority created [in Title 63H, Chapter 2, Utah Generated Renewable Energy

254 ~~Electricity Network Authority Act]~~ by Section 63H-2-201; ~~[and]~~

255 (xii) Utah Capital Investment Corporation created ~~[in Title 63M, Chapter 1, Part 12,~~
256 ~~Utah Venture Capital Enhancement Act.]~~ by Section 63M-1-1207; and

257 (xiii) Military Installation Development Authority created by Section 63H-1-201.

258 (c) Notwithstanding this Subsection (4), "independent entity" does not include:

259 (i) the Public Service Commission of Utah created ~~[in]~~ by Section 54-1-1;

260 (ii) an institution within the state system of higher education;

261 (iii) a city, county, or town;

262 (iv) a local school district;

263 (v) a local district under Title 17B, Limited Purpose Local Government Entities - Local
264 Districts; or

265 (vi) a special service district under Title 17D, Chapter 1, Special Service District Act.

266 (5) "Independent state agency" means an entity that is created by the state, but is
267 independent of the governor's direct supervisory control.

268 (6) "Money held in trust" means money maintained for the benefit of:

269 (a) one or more private individuals, including public employees;

270 (b) one or more public or private entities; or

271 (c) the owners of a quasi-public corporation.

272 (7) "Public corporation" means an artificial person, public in ownership, individually
273 created by the state as a body politic and corporate for the administration of a public purpose
274 relating to the state or its citizens.

275 (8) "Quasi-public corporation" means an artificial person, private in ownership,
276 individually created as a corporation by the state which has accepted from the state the grant of
277 a franchise or contract involving the performance of a public purpose relating to the state or its
278 citizens.

279 Section 5. Section **63E-1-304** is enacted to read:

280 **63E-1-304. Limitations on risk management coverage.**

281 (1) Except as specifically modified in its authorizing statute, an independent entity is

282 not eligible to receive coverage under the Risk Management Fund created by Section
283 63A-4-201.

284 (2) If an independent entity that receives coverage under the Risk Management Fund is
285 involved in a commercial activity, the state risk manager may require that the entity:

286 (a) procure commercial insurance coverage or provide proof of vendor's insurance
287 coverage for the commercial activity; and

288 (b) comply with loss prevention measures specified by the state risk manager.

289 Section 6. Section **63E-2-107** is amended to read:

290 **63E-2-107. Prohibited participation.**

291 Except as specifically modified in its authorizing statute, each independent corporation
292 may not participate in the:

293 (1) issuance of bonds that are the obligation of the state; or

294 (2) services provided to state agencies, including:

295 (a) fuel dispensing;

296 (b) motor pool services;

297 (c) surplus property services;

298 [~~(d) risk management coverage;~~]

299 [~~(e)~~] (d) information technology services; or

300 [~~(f)~~] (e) archive services.

301 Section 7. Section **63H-4-108 (Effective 05/01/13)** is amended to read:

302 **63H-4-108 (Effective 05/01/13). Relation to certain acts -- Participation in Risk**
303 **Management Fund.**

304 (1) The authority is exempt from:

305 (a) Title 51, Chapter 5, Funds Consolidation Act;

306 (b) Title 63A, Utah Administrative Services Code;

307 (c) Title 63G, Chapter 6a, Utah Procurement Code;

308 (d) Title 63J, Chapter 1, Budgetary Procedures Act; and

309 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

310 (2) The authority is subject to audit by the state auditor pursuant to Title 67, Chapter 3,
311 Auditor, and by the legislative auditor general pursuant to Section 36-12-15.

312 (3) Subject to the requirements of Subsection 63E-1-304(2), the authority may
313 participate in coverage under the Risk Management Fund created by Section 63A-4-201.

314 Section 8. **Effective date.**

315 (1) Except as provided in Subsection (2), this bill takes effect on May 14, 2013.

316 (2) Section 53C-1-201(Effective 07/01/13) takes effect on July 1, 2013.