

HB0168S01 compared with HB0168

~~deleted text~~ shows text that was in HB0168 but was deleted in HB0168S01.

inserted text shows text that was not in HB0168 but was inserted into HB0168S01.

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Representative Melvin R. Brown proposes the following substitute bill:

SCHOOL AND INSTITUTIONAL TRUST LANDS AND FUNDS MANAGEMENT PROVISIONS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Melvin R. Brown

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies and enacts provisions relating to the management of state trust lands and funds.

Highlighted Provisions:

This bill:

- ▶ modifies provisions relating to the director of the School Children's Trust Section, including:
 - the required qualifications of the director;
 - the removal of the director; and
 - the duties of the director;

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- ▶ modifies provisions relating to the School Children's Trust Section;
- ▶ requires the School Children's Trust Section to provide staff support to the nominating committee for board members of the School and Institutional Trust Lands Administration;
- ▶ enacts the School and Institutional Trust Fund Management Act;
- ▶ establishes the School and Institutional Trust Fund Office, a board of trustees of the Office, and the position of director of the office;
- ▶ provides for the management of a fund consisting of money from the sale or use of land granted to the state under the Utah Enabling Act and other proceeds, revenue, and assets;
- ▶ provides for a nominating committee for members of the School and Institutional Trust Fund Board of Trustees; and
- ▶ repeals Investment of Land Grant Trust Fund Money provisions.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill takes effect on July 1, 2014.

Utah Code Sections Affected:

AMENDS:

53A-16-101.6, as enacted by Laws of Utah 2012, Chapter 224

53C-1-201, as last amended by Laws of Utah 2013, Chapters 220 and 412

53C-1-203, as last amended by Laws of Utah 2012, Chapter 224

53C-3-102, as enacted by Laws of Utah 1994, Chapter 294

63E-1-102, as last amended by Laws of Utah 2013, Chapter 220

ENACTS:

53D-1-101, Utah Code Annotated 1953

53D-1-102, Utah Code Annotated 1953

53D-1-103, Utah Code Annotated 1953

53D-1-104, Utah Code Annotated 1953

53D-1-105, Utah Code Annotated 1953

53D-1-201, Utah Code Annotated 1953

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53D-1-202, Utah Code Annotated 1953
53D-1-203, Utah Code Annotated 1953
53D-1-301, Utah Code Annotated 1953
53D-1-302, Utah Code Annotated 1953
53D-1-303, Utah Code Annotated 1953
53D-1-304, Utah Code Annotated 1953
53D-1-401, Utah Code Annotated 1953
53D-1-402, Utah Code Annotated 1953
53D-1-403, Utah Code Annotated 1953
53D-1-501, Utah Code Annotated 1953
53D-1-502, Utah Code Annotated 1953
53D-1-503, Utah Code Annotated 1953
53D-1-601, Utah Code Annotated 1953
53D-1-602, Utah Code Annotated 1953
53D-1-603, Utah Code Annotated 1953
53D-1-604, Utah Code Annotated 1953
53D-1-701, Utah Code Annotated 1953
53D-1-702, Utah Code Annotated 1953

REPEALS:

51-7a-101, as last amended by Laws of Utah 2011, Chapter 342
51-7a-102, as enacted by Laws of Utah 2006, Chapter 277
51-7a-201, as enacted by Laws of Utah 2006, Chapter 277
51-7a-202, as enacted by Laws of Utah 2006, Chapter 277
51-7a-301, as last amended by Laws of Utah 2010, Chapter 286
51-7a-302, as enacted by Laws of Utah 2006, Chapter 277

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

Section 1. Section **53A-16-101.6** is amended 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.

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(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) investments;

~~[(iv)]~~ (v) public education;

~~[(v)]~~ (vi) real estate;

~~[(vi)]~~ (vii) renewable resources; [and]

(viii) risk management; and

~~[(vii)]~~ (ix) trust law.

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

(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.

(e) The State Board of Education may:

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

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

(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

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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.]~~

(g) The State Board of Education may remove the director only by majority vote of a quorum in an open and public meeting after proper notice and the inclusion of the removal item on the agenda.

(4) The State Board of Education shall make rules regarding:

(a) regular reporting from the School Children's Trust Section director to the State Board of Education, to allow the State Board of Education to fulfill its duties in representing the trust beneficiaries; and

(b) the day-to-day reporting of the School Children's Trust Section director.

(5) (a) The director shall annually submit a proposed section budget to the State Board of Education.

(b) After approving a section budget, the State Board of Education shall propose the approved budget to the Legislature.

(6) The director is entitled to attend any presentation, discussion, meeting, or other gathering concerning the trust, subject to:

(a) provisions of law prohibiting the director's attendance to preserve confidentiality; or

(b) other provisions of law that the director's attendance would violate.

~~[(5)]~~ (7) The section shall have a staff.

~~[(6)]~~ (8) The section shall protect current and future beneficiary rights and interests in 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.

~~[(7)]~~ (9) The section shall promote:

(a) productive use of school and institutional trust lands[-]; and

(b) the efficient and prudent investment of funds managed by the School and Institutional Trust Fund Office, created in Section 53D-1-201.

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~~[(8)]~~ (10) 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)iv]~~ the School and Institutional Trust Fund Office, created in Section 53D-1-201;

~~[(vi)v]~~ the School and Institutional Trust Fund Board of Trustees, created in Section 53D-1-301;

~~[(v)]~~ ~~[(vii)vi]~~ the attorney general;

~~[(vi)]~~ ~~[(viii)vii]~~ the public; and

~~[(vii)]~~ ~~[(ix)viii]~~ other entities as determined by the section.

~~[(9)]~~ (11) 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.

~~[(10)]~~ (12) The section shall provide information requested by a person or entity described in Subsections ~~[(8)]~~ (10)(c)(i) through ~~[(v)]~~ (vii).

Section 2. Section **53C-1-201** is amended to read:

53C-1-201. Creation of administration -- Purpose -- Director -- Participation in Risk Management Fund.

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

(b) The administration shall manage all school and institutional trust lands and assets within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation of Revenue from Trust Lands, and ~~[Sections 51-7a-201 and 51-7a-202]~~ Title 53D, Chapter 1, School and Institutional Trust Fund Management Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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to making such a recommendation.

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

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

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

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

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

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

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

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

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

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accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement policies provided by the board regarding Native American remains.

(6) In connection with joint ventures and other transactions involving trust lands and minerals approved under Sections 53C-1-303 and 53C-2-401, the administration, with board approval, may become a member of a limited liability company under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405 and is considered a person under Section 48-2c-102 or Section 48-3a-102.

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

Section 3. 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 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 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

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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;

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

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

(7) The School Children's Trust Section, established in Section 53A-16-101.6, shall provide staff support to the nominating committee.

Section 4. Section 53C-3-102 is amended to read:

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53C-3-102. Deposit and allocation of money received.

(1) (a) The director shall pay to the ~~[state treasurer]~~ School and Institutional Trust Fund Office, created in Section 53D-1-201, all money received, accompanied by a statement showing the respective sources of this money.

(b) Each source shall be classified as to sales, rentals, royalties, interest, fees, penalties, and forfeitures.

(2) All money received from the sale of lands granted by Section 6 of the Utah Enabling Act for the support of the common schools, all money received from the sale of lands selected in lieu of those lands, all money received from the United States under Section 9 of the Utah Enabling Act, all money received from the sale of lands or other securities acquired by the state from the investment of those funds, all sums paid for fees, all forfeitures, and all penalties paid in connection with these sales shall be deposited in the Permanent State School Fund.

(3) All money received from the sale or other disposition of institutional trust lands granted to the state by the United States under Section 7, 8, or 12 of the Utah Enabling Act, and all sums paid for fees, forfeitures, and penalties received in connection with these sales or dispositions shall go to the respective permanent funds established for the benefit of those institutions under the Utah Enabling Act and the Utah Constitution.

(4) (a) All lands acquired by the state through foreclosure of mortgages securing school or institutional trust funds or through deeds from mortgagors or owners of those lands shall become a part of the respective school or institutional trust lands.

(b) All money received from these lands shall be treated as money received from school or institutional trust lands.

(5) All money received from the sale of lands acquired by the state through foreclosure of mortgages securing trust funds or through deeds from mortgagors or owners of such lands, whether a profit is realized or a loss sustained on the principal invested, shall be regarded as principal and shall go into the principal or permanent fund from which it was originally taken in reimbursement of that fund, with profits being used to offset losses.

(6) (a) All money received by the director as a first or down payment on applications to purchase, permit, or lease trust lands or minerals shall be paid to the state treasurer and held in suspense pending final action on those applications.

(b) After final action the payments received under Subsection (6)(a) shall either be

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credited to the appropriate fund or account, or refunded to the applicant in accordance with the action taken.

Section ~~{4}~~5. Section **53D-1-101** is enacted to read:

TITLE 53D. SCHOOL AND INSTITUTIONAL TRUST FUND

CHAPTER 1. SCHOOL AND INSTITUTIONAL TRUST FUND MANAGEMENT ACT

Part 1. General Provisions

53D-1-101. Title.

(1) This title is known as "School and Institutional Trust Fund."

(2) This chapter is known as the "School and Institutional Trust Fund Management Act."

Section ~~{5}~~6. Section **53D-1-102** is enacted to read:

53D-1-102. Definitions.

(1) "Account" means the School and Institutional Trust Fund Management Account, created in Section 53D-1-203.

(2) "Beneficiaries":

(a) means those for whose benefit the trust fund is managed and preserved, consistent with the enabling act, the Utah Constitution, and state law; and

(b) does not include other government institutions or agencies, the public at large, or the general welfare of the state.

(3) "Board" means the board of trustees established in Section 53D-1-301.

(4) "Director" means the director of the office.

(5) "Enabling act" means the act of Congress, dated July 16, 1894, enabling the people of Utah to form a constitution and state government and to be admitted into the Union.

(6) "Nominating committee" means the committee established under Section 53D-1-501.

(7) "Office" means the School and Institutional Trust Fund Office, created in Section 53D-1-201.

(8) "School children's trust section" means the School Children's Trust Section within the State Office of Education, established in Section 53A-16-101.6.

(9) "Trust fund" means money derived from:

(a) the sale or use of land granted to the state under Sections 6, 8, and 12 of the

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Enabling Act:

(b) proceeds referred to in Section 9 of the Enabling Act from the sale of public land;
and

(c) revenue and assets referred to in Utah Constitution, Article X, Section 5,
Subsections (1)(c), (e), and (f).

Section ~~{6}~~7. Section **53D-1-103** is enacted to read:

53D-1-103. Application of other law.

~~{~~ (1) Except as provided in this section, a statutory provision applicable to a state department, division, agency, or other entity does not apply to the office.

~~}~~ (~~{2}~~1) The office, board, and nominating committee are subject to Title 52, Chapter 4, Open and Public Meetings Act.

(~~{3}~~2) Subject to Subsection 63E-1-304(2), the office ~~{shall}~~may participate in coverage under the Risk Management Fund, created in Section 63A-4-201.

(~~{4}~~ (a) 3) ~~{Except as provided in Subsection (4)(b), the}~~ The office and board are subject to Title 63G, Chapter 2, Government Records Access and Management Act.{

~~_____~~ (b) (i) As used in this Subsection (4)(b), "business proposal" means a proposal for investing trust fund money or assets.

~~_____~~ (ii) The director may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules, subject to board approval, that allow the office to classify a business proposal as protected under Section 63G-2-305 for as long as necessary for the office to evaluate the proposal.

~~_____~~ (iii) A person who is denied access to a business proposal because of its classification as protected pursuant to a rule adopted under Subsection (4)(b)(ii) may not appeal that access denial under Section 63G-2-403, subject to Subsection (4)(b)(iv).

~~_____~~ (iv) Upon the office completing its evaluation of a business proposal:

~~_____~~ (A) the business proposal becomes subject to classification and disclosure as provided in Title 63G, Chapter 2, Government Records Access and Management Act, if the office's evaluation results in a determination to accept the proposal; and

~~_____~~ (B) if the office's evaluation results in a determination not to accept the business proposal, the office shall return the business proposal to the person making the business proposal, and the business proposal is not considered a record, as defined in Section

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~~63G-2-103, for purposes of Title 63G, Chapter 2, Government Records Access and Management Act.~~

~~(5)4~~ (a) In making rules under this chapter, the director is subject to and shall comply with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except as provided in Subsection (5)4(b).

~~(b) (i)~~ Subsections 63G-3-301(6) and (7) and Section 63G-3-601 do not apply to the director's making of rules under this chapter.

~~{ (ii) The director may, with the board's approval, establish an expedited rulemaking process that allows the director to make rules in an expedited manner if:~~

~~— (A) the director makes written findings of the circumstances that create the need to use an expedited process to make rules in order to avoid losing an opportunity to participate in an investment of assets of the trust fund that the director considers to be advantageous to the trust fund; and~~

~~— (B) the board approves the use of the expedited process.~~

~~— (iii) If the director makes a rule using an expedited process under Subsection (5)(b)(ii), the director shall:~~

~~— (A) file with the Division of Administrative Rules, created in Section 63G-3-401, a copy of the rule, a copy of the director's findings under Subsection (5)(b)(ii)(A), and an analysis explaining the specific reasons and justifications for those findings; and~~

~~— (B) notify interested parties of the rule, as provided in Subsection 63G-3-301(10).~~

~~† (6)5~~ Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies to a board member to the same extent as it applies to an employee, as defined in Section 63G-7-102.

~~(7)6~~ (a) A board member, the director, and an office employee or agent are subject to:

(i) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; and

(ii) other requirements that the board establishes.

(b) In addition to any restrictions or requirements imposed under Subsection (7)6(a), a board member, the director, and an office employee or agent may not directly or indirectly acquire an interest in the trust fund or receive any direct benefit from any transaction dealing with trust fund money.

~~(8)7~~ (a) Except as provided in Subsection (8)7(b), the office shall comply with

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Title 67, Chapter 19, Utah State Personnel Management Act.

(b) (i) Upon a recommendation from the director after the director's consultation with the executive director of the Department of Human Resource Management, the board may provide that specified positions in the office are exempt from Section 67-19-12 and the career service provisions of Title 67, Chapter 19, Utah State Personnel Management Act, as provided in Subsection 67-19-15(1), if the board determines that exemption is required for the office to fulfill efficiently its responsibilities under this chapter.

(ii) The director position is exempt from Section 67-19-12 and the career service provisions of Title 67, Chapter 19, Utah State Personnel Management Act, as provided in Subsection 67-19-15(1).

(iii) (A) After consultation with the executive director of the Department of Human Resource Management, the director shall set salaries for positions that are exempted under Subsection ~~(8)7~~(b)(i), within ranges that the board approves.

(B) In approving salary ranges for positions that are exempted under Subsection ~~(8)7~~(b)(i), the board shall consider salaries for similar positions in private enterprise and other public employment.

~~(9)8~~ The office is subject to legislative appropriation, to executive branch budgetary review and recommendation, and to legislative and executive branch review.

Section ~~(7)8~~. Section **53D-1-104** is enacted to read:

53D-1-104. Attorney general representation.

(1) The attorney general shall:

(a) represent the board, director, and office in any legal action relating to the trust fund;

(b) undertake suits for damages and any other necessary or appropriate relief in the name of the trust fund and the state; and

(c) ensure that legal counsel assigned to provide legal counsel to the board, director, and office is present at all board meetings.

(2) The attorney general may institute an action to enforce this chapter or to protect the interests of beneficiaries.

Section ~~(8)9~~. Section **53D-1-105** is enacted to read:

53D-1-105. Annual audit by state auditor.

(1) The state auditor shall conduct an annual audit of the trust fund money and assets

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on a fund by fund basis, including:

(a) an evaluation of the independent custodial arrangements made for the management and investment of trust fund money and assets; and

(b) a verification of the accuracy of the office's report of returns generated on the office's investments.

(2) The state auditor shall:

(a) report the results of an audit under this section in writing; and

(b) make the written audit report available to the public.

(3) The state auditor shall consult with the board at least annually as to whether additional matters should be included within the scope of the annual audit.

Section ~~{9}~~10. Section **53D-1-201** is enacted to read:

Part 2. School and Institutional Trust Fund Office

53D-1-201. School and Institutional Trust Fund Office -- Status -- Duties.

(1) There is created within state government the School and Institutional Trust Fund Office.

(2) The office is an independent state agency within the executive branch and is not a division of any other executive branch department.

(3) The office shall manage the trust fund.

(4) No later than September 1 of each year, the office shall provide to the Division of Finance financial information for the prior fiscal year that the Division of Finance requests for financial reporting purposes.

Section ~~{10}~~11. Section **53D-1-202** is enacted to read:

53D-1-202. Access to office records and personnel.

(1) The office shall provide board members and the director of the school children's trust section access to all office records and personnel as necessary for board members and the director of the school children's trust section to fulfill their responsibilities to ensure that the office is in full compliance with applicable law and policies.

(2) If the director requires, board members and the director of the school children's trust section shall maintain confidentiality of information they obtain from office records and personnel.

Section ~~{11}~~12. Section **53D-1-203** is enacted to read:

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53D-1-203. Funding of office operations.

(1) There is created an enterprise fund known as the School and Institutional Trust Fund Management Account.

(2) The account is funded by money deposited into the account as provided in Subsection (3).

(3) The director of school and institutional trust lands, appointed under Section 53C-1-301, shall annually deposit an amount of money into the account equal to the annual appropriation made to the office by the Legislature.

(4) ~~{(a)}~~ If the amount of money deposited into the account under Subsection (3) in any year exceeds the amount required by the office during that year to fund its operations, the office shall distribute that excess money proportionately to the various funds established for the beneficiaries of land grants under the enabling act, based on the balances of those funds as of June 30.

~~{(b)}5} ~~{Upon request by the office, the director of school and institutional trust lands, appointed under Section 53C-1-301, shall provide information to the office sufficient to enable the office to determine the proportionate share to be distributed to each fund under Subsection (4)(a).~~~~

~~Section 12} Before distributing earnings from trust fund assets, the office may deduct any audit, risk management, consulting, equipment, legal, and custodial costs and management fees incurred in managing the trust fund assets.~~

Section 13. Section **53D-1-301** is enacted to read:

Part 3. School and Institutional Trust Fund Board of Trustees

53D-1-301. Board of trustees -- Creation -- Membership.

(1) There is created a School and Institutional Trust Fund Board of Trustees.

(2) The board consists of:

(a) the state treasurer; and

(b) four additional members who are ~~{~~:

~~{(i)}~~ appointed by the state treasurer on a nonpartisan basis from a list of at least two qualified candidates per position, nominated by the nominating committee, as provided in Section 53D-1-503 ~~{; and}~~;

~~{(ii)}~~ confirmed by the Senate.

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† (3) The state treasurer shall appoint members under Subsection (2)(b) who possess:

(a) outstanding professional qualifications pertinent to the prudent investment of trust fund money; and

(b) expertise in institutional investment management.

(4) (a) The term of a board member under Subsection (2)(b) is six years.

(b) Notwithstanding Subsection (4)(a), the nominating committee shall stagger terms of initial board members so that the term of not more than one member expires in any year.

(c) A board member may not serve consecutive terms, except that:

(i) a board member whose term is less than six years because of the staggering of terms under Subsection (4)(b) may serve a full consecutive term after the completion of the initial term; and

(ii) a member appointed to fill a vacancy may serve a full consecutive term after filling a previous unexpired term.

(d) A board member shall serve until a successor is appointed, confirmed, and qualified.

(5) Before assuming duties as a board member, a member shall take an oath of office that includes the following:

"I solemnly swear to carry out my duties as a member of the School and Institutional Trust Fund Board of Trustees and to act with undivided loyalty to the beneficiaries of the trust fund that the board oversees, to the best of my abilities and consistent with the law."

(6) The state treasurer may remove a board member for cause, subject to the affirmative vote of ~~two-thirds of all~~ at least two other board members ~~of~~, besides the ~~Senate~~ state treasurer.

(7) The state treasurer shall fill a vacancy in the same manner as the initial appointment under Subsection (2)(b)(i).

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

(a) Section 63A-3-106;

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

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

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Section ~~{13}~~14. Section 53D-1-302 is enacted to read:

53D-1-302. Board chair and vice chair -- Quorum.

(1) (a) The state treasurer is the chair of the board.

(b) The chair shall faithfully represent the will of the board ~~to the extent the board's will is consistent with state law.~~

(2) (a) The board shall annually select a vice chair from its membership.

(b) The vice chair shall act as chair in the absence of the chair.

(3) (a) Three members of the board constitute a quorum for the purpose of holding a meeting.

(b) Unless otherwise specified in this title, an action of the board requires the affirmative vote of at least three members.

Section ~~{14}~~15. Section 53D-1-303 is enacted to read:

53D-1-303. Board authority and duties.

(1) The board has broad policymaking authority over the office and the trust fund.

(2) (a) The board shall establish policies for the management of:

(i) the office, including:

(A) an investment management code of conduct and associated compliance policy;

(B) a policy for the strategic allocation of trust fund assets;

(C) a soft dollar policy; and

(D) a policy articulating the board's investment philosophy for trust fund assets; and

(ii) the trust fund.

(b) Policies that the board adopts shall:

(i) be consistent with the enabling act, the Utah Constitution, and other applicable state law;

(ii) reflect undivided loyalty to the beneficiaries consistent with fiduciary duties;

(iii) be designed to prudently optimize trust fund returns and increase the value of the trust fund, consistent with the balancing of short-term and long-term interests, so that the fiduciary duty of intergenerational equity is met;

(iv) be designed to maintain the integrity of the trust fund and prevent the misapplication of money in the trust fund;

(v) enable the board to oversee the activities of the office; and

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(vi) otherwise be in accordance with standard trust principles as provided by state law.

(3) The board shall:

(a) establish a conflict of interest policy for the office and board members;

(b) establish policies governing the evaluation, selection, and monitoring of independent custodial arrangements;

(c) ensure that the office is managed according to law;

(d) establish bylaws to govern the board;

(e) establish the compensation of the director;

(f) annually examine the compensation and performance of the director as part of the board's budget review process;

(g) annually report the director's compensation to the Legislature; and

(h) adopt policies to provide for annual training of board members regarding their duties and responsibilities.

(4) The board may:

~~{ (a) establish one or more advisory committees to advise the board, director, or office on policies affecting the management of the trust fund;~~

~~{ (b) a) after conferring with the director:~~

~~(i) hire one or more consultants to advise the board, director, or office on issues affecting the management of the trust fund; and~~

~~(ii) pay compensation to any consultant hired under Subsection (4)(b) a) (i), subject to budgetary constraints; and~~

~~(c) submit to the director a written question or set of questions concerning policies and practices affecting the management of the trust fund;~~

~~(d) notwithstanding any other provision of this chapter or other state law, employ independent legal counsel to represent and protect the interests of the trust fund and the beneficiaries; and~~

~~(e) pay members per diem and travel expenses}.~~

Section ~~{15}~~ 16. Section **53D-1-304** is enacted to read:

53D-1-304. Board meetings.

~~{In cooperation with the director, the}~~ The board shall hold at least nine meetings per year to conduct business.

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(2) The board chair ~~{, the director,}~~ or two board members:

(a) may call a board meeting; and

(b) if calling a board meeting, shall provide as much advance notice as is reasonable under the circumstances to all board members, the director, and the director of the school children's trust section.

(3) Any board member may place an item on a board meeting agenda.

(4) The board shall annually adopt a set of parliamentary procedures to govern board meetings.

(5) The board may establish an attendance policy to govern the attendance of board members at board meetings.

Section ~~{16}~~17. Section **53D-1-401** is enacted to read:

Part 4. Director

53D-1-401. Appointment of director -- Qualifications -- Nature of employment --

Removal by State Board of Education petition.

(1) The office shall be managed by a director.

(2) On or before January 25, 2015, the board shall appoint an individual as director.

(3) The board shall ensure that an individual appointed as director possesses:

(a) outstanding professional qualifications pertinent to the prudent investment of trust fund money; and

(b) expertise in institutional investment management.

(4) The director is an at-will employee who may be removed by the board at any time with or without cause.

(5) (a) The State Board of Education may submit a written petition to the board requesting the board to remove the director for cause, explained in the petition.

(b) The board shall hold a hearing on a petition under Subsection (5)(a) within 45 days after receiving the petition.

(c) If, after holding a hearing, the board finds by a preponderance of the evidence that there is cause for removing the director, the board shall remove the director.

Section ~~{17}~~18. Section **53D-1-402** is enacted to read:

53D-1-402. Director duties and responsibilities.

(1) The director has broad authority to manage the office to fulfill its purposes,

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consistent with the enabling act, the Utah Constitution, state law, and board policies.

(2) The director shall:

(a) before assuming the duties of director, take an oath that includes the following:

"I solemnly swear to carry out my duties as director of the School and Institutional Trust Fund Office with undivided loyalty to the beneficiaries of the trust fund managed by the office, to the best of my abilities and consistent with the law.";

(b) carry out the policies of the board;

(c) act with undivided loyalty to those entitled to the benefit of income from the trust fund, consistent with the director's fiduciary duties and responsibilities;

(d) follow the prudent investor rule, prudently seeking to obtain the optimum return from the investment of trust fund money and assets, balancing short-term and long-term interests under the principle of intergenerational equity;

(e) exercise full discretionary authority to manage, maintain, transfer, or sell assets of the trust fund in the manner that the director determines to be most favorable to beneficiaries;

(f) maintain the integrity of the trust fund and prevent, through prudent management, the misapplication of trust fund money;

(g) adopt rules, as provided in Subsection 53D-1-103(3), that are necessary for the proper exercise of the director's duties under this chapter and policies established by the board;

(h) faithfully manage the office under policies established by the board;

(i) annually submit to the board:

(i) an office budget; and

(ii) a financial plan for operations of the office;

(j) after board approval of the office budget, submit the budget to the governor and the Legislature;

(k) direct and control budget expenditures;

(l) establish job descriptions and, within budgetary constraints, employ staff necessary to accomplish the purposes of the office;

(m) in accordance with generally accepted principles of fund accounting, establish a system to identify and account for the trust fund assets;

(n) notify the director of the school children's trust section of major items that the director knows may be useful to the director of the school children's trust section in protecting

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the rights of beneficiaries:

(o) maintain appropriate records of trust fund activities to enable auditors to conduct periodic audits;

(p) respond in writing within a reasonable time to a request by the director of the school children's trust section for information on policies and practices affecting the management of the trust fund; and

(q) respond to a question that the board submits under Subsection 53D-1-303(4)(c) within a reasonable time after receiving the question.

(3) The ~~director~~ office may:

(a) sue or be sued ~~as the director of the trust fund~~; and

(b) contract with other public agencies for personnel management services.

Section ~~18~~19. Section **53D-1-403** is enacted to read:

53D-1-403. Reports.

(1) At least annually, the director shall report in person to the Legislative Management Committee, the governor, and the State Board of Education, concerning the office's investments, performance, estimated distributions, and other activities.

(2) The director shall report to the board concerning the work of the director and the investment activities and other activities of the office:

(a) in a public meeting at least nine times per year; and

(b) as otherwise requested by the board.

(3) (a) Before November 1 of each year, the director shall:

(i) submit a written report to each school community council, created under Section 53A-1a-108, concerning the office's investments, performance, estimated distributions, and other activities; and

(ii) post the written report described in Subsection (3)(a)(i) on the office's website.

(b) A report under Subsection (3)(a) shall be prepared in simple language designed to be understood by the general public.

(4) The director shall provide to the board:

(a) monthly written reports on the activities of the office;

(b) quarterly financial reports; and

(c) any other report requested by the board.

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(5) The director shall:

(a) invite the director of the school children's trust section to attend any meeting at which the director gives a report under this section; and

(b) provide the director of the school children's trust section:

(i) a copy of any written report prepared under this section; and

(ii) any other report requested by the director of the school children's trust section.

Section ~~{19}~~20. Section **53D-1-501** is enacted to read:

Part 5. Nominating Committee

53D-1-501. Nominating committee -- Membership -- Terms -- Vacancies --

Compensation.

(1) There is established a School and Institutional Trust Fund Nominating Committee.

(2) The nominating committee consists of:

(a) two members appointed by the State Board of Education;

(b) two members appointed by the ~~{board}~~director of the ~~{CFA Society of Salt Lake}~~school children's trust section, each of whom is a member of a respected professional organization;

(c) the chief investment officer of the University of Utah endowment;

(d) the chief investment officer of the Utah State University endowment; and

(e) the director of the school children's trust section.

(3) An individual appointed as a member of the nominating committee under Subsections (2)(a) or (b) shall be appointed based on the individual's expertise in:

(a) investment finance;

(b) institutional asset management;

(c) trust administration; or

(d) the practice of law in the areas of capital markets, securities law, trusts, foundations, endowments, investment finance, institutional asset management, or trust administration.

(4) The term of a member appointed under Subsection (2)(a) or (b) is four years, except that the initial term of members appointed under Subsection (2)(b) is two years.

(5) A nominating committee member shall serve until a successor is appointed and qualified.

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(6) (a) If a member appointed under Subsection (2)(a) or (b) leaves office, the vacancy shall be filled in the same manner as the initial appointment under Subsection (2)(a) or (b).

(b) An individual appointed to fill a vacancy under Subsection (6)(a) serves the remainder of the unexpired term.

(7) A member of the nominating committee 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;

(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 ~~{20}~~21. Section **53D-1-502** is enacted to read:

53D-1-502. Chair and vice chair -- Quorum and voting requirements -- Bylaws -- Staff.

(1) The nominating committee shall select a chair and vice chair from its members.

(2) (a) ~~{Three}~~Four members of the nominating committee constitute a quorum.

(b) An action of the nominating committee requires the affirmative vote of at least ~~{three}~~four members.

(3) The nominating committee shall establish bylaws to govern the nominating committee.

(4) The school children's trust section shall provide staff support to the nominating committee.

Section ~~{21}~~22. Section **53D-1-503** is enacted to read:

53D-1-503. Nominating process -- Replacement list of candidates -- Interim appointment.

(1) The nominating committee shall nominate at least two candidates for each position or vacancy on the board.

(2) The nominating committee shall:

(a) nominate candidates who meet the criteria stated in Subsection 53D-1-301(3); and

(b) consider the character and reputation of candidates the nominating committee nominates.

(3) If the state treasurer considers the candidates nominated under Subsection (1) to be

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unacceptable, the state treasurer may request the nominating committee to nominate at least two other candidates per appointment.

(4) As many times as the state treasurer considers candidates nominated by the nominating committee to be unacceptable under Subsection (3), the nominating committee shall follow the process described in Subsections (1) and (2) until the state treasurer appoints a candidate.

Section ~~{22}~~23. Section 53D-1-601 is enacted to read:

Part 6. Management and Investment Standards and Principles

53D-1-601. General management and investment principles -- Duty of person with special skills or expertise.

(1) Board members, the director, and office staff shall act in the best interests of the beneficiaries and comply with the duty of undivided loyalty to the beneficiaries.

(2) A person who manages and invests trust fund money or assets shall:

(a) manage and invest in good faith and with the care a prudent professional in a like position would exercise under similar circumstances;

(b) consider, as relevant:

(i) general economic conditions;

(ii) the possible effect of inflation or deflation;

(iii) any expected tax consequences of investment decisions or strategies;

(iv) the role that each investment or course of action plays within the overall investment portfolio of the trust fund;

(v) the expected net return from income and the appreciation of investments;

(vi) the expected returns and risk characteristics of individual assets;

(vii) the needs of the beneficiaries to receive distributions and to preserve capital;

(viii) liquidity;

(ix) asset allocation; and

(x) costs and management fees; and

(c) make management and investment decisions about an individual asset not in isolation but in the context of the trust fund's portfolio of investments as a whole and as part of an overall investment strategy, having risk and return objectives reasonably suited to the trust fund and to the beneficiaries.

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(3) A person who has special skills or expertise, or who is selected to assist in managing and investing the trust fund money or assets based on the person's representation of having special skills or expertise, has a duty to use those skills and that expertise in managing and investing trust fund money and assets.

Section ~~{23}~~24. Section **53D-1-602** is enacted to read:

53D-1-602. Office authority, responsibilities, and duties.

(1) In managing and investing trust fund money and assets, the office:

(a) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the trust fund, and the skills available to the office; and

(b) shall make a reasonable effort to verify facts related to the management and investment of trust fund money and assets.

(2) Except as otherwise provided by law, the office may invest in any kind of property or any type of investment that is:

(a) consistent with this part; and

(b) in the best interests of the beneficiaries.

(3) The office shall diversify the investments of trust fund money and assets.

(4) Within a reasonable time after receiving a contribution to the trust fund, the office shall make and carry out decisions concerning the retention or disposition of the contribution or to rebalance the trust fund portfolio, in order to bring the trust fund into compliance with the purposes, terms, and distribution requirements of trust fund money and assets.

(5) The ~~office~~board may delegate any management or investment function to the director, a committee of board members, or an employee of the office.

Section ~~{24}~~25. Section **53D-1-603** is enacted to read:

53D-1-603. Director authority, responsibilities, and duties.

(1) (a) The director may delegate to an external agent the management of a portion of the trust fund money or assets, if the delegation is prudent under the circumstances and consistent with the purposes of the trust fund.

(b) The director shall periodically review the actions of an agent under Subsection (1)(a) in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(2) The director shall act in good faith, with the care that a prudent professional in a

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like position would exercise under similar circumstances, in:

- (a) selecting an agent;
- (b) establishing the scope and terms of a delegation under Subsection (1); and
- (c) periodically reviewing the agent's actions, as provided in Subsection (1)(b).

(3) In performing a delegated function, an agent owes a duty to the state and the beneficiaries to exercise reasonable care to comply with the scope and terms of the delegation.

~~{~~ (4) By accepting a delegation of a management or investment function relating to trust fund money or assets, an agent submits to the jurisdiction of the courts of the state in all proceedings arising from or related to the delegation or the performance of the delegated function.

~~}~~ Section ~~{25}~~26. Section **53D-1-604** is enacted to read:

53D-1-604. Compliance not determined by hindsight.

Compliance with a provision of this part in making a decision or taking an action is determined in light of the facts and circumstances existing at the time a decision is made or an action is taken and not by hindsight.

Section ~~{26}~~27. Section **53D-1-701** is enacted to read:

Part 7. Review of Decisions or Actions

53D-1-701. Petition for review of director or office decision or action -- Hearing examiner -- Decision -- Judicial review.

(1) (a) Subject to Subsection (1)(b), a person aggrieved by a decision or action of the director or office may, in accordance with rules adopted by the board under Section 53D-1-702, petition the board for an administrative review of the decision or action.

(b) A person may not petition for review of:

- (i) a decision whether to buy, sell, hold, or exchange a specific investment; or
- (ii) an action to buy, sell, hold, or exchange a specific investment.

(2) (a) The board may appoint a qualified hearing examiner to take evidence and make a recommendation for board action on the petition.

(b) If the board appoints a hearing examiner under Subsection (2)(a), the board shall, in conducting its review and making its decision on the petition, consider the hearing examiner's recommendation.

(3) In making its decision on the petition, the board shall:

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(a) make findings and conclusions and base its decision on the findings and conclusions;

(b) uphold the decision or action of the director or office unless the board finds, by a preponderance of the evidence, that the decision or action violated applicable law, policy, or rule; and

(c) inform the person who filed the petition of the person's right to judicial review of the board's decision.

(4) A person aggrieved by a final decision of the board on a petition filed under this section may seek judicial review of that decision as provided in Sections 63G-4-402 and 63G-4-403.

Section ~~{27}~~28. Section **53D-1-702** is enacted to read:

53D-1-702. Board rules on petition for review of director or office decision or action.

(1) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to govern proceedings on a petition under Section 53D-1-701.

(2) Rules under Subsection (1) shall ensure procedural due process in proceedings relating to a petition under Section 53D-1-701.

Section 29. Section **63E-1-102** is amended to read:

63E-1-102. Definitions -- List of Independent entities.

As used in this title:

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

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

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

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

(i) independent state agency; or

(ii) independent corporation.

(b) "Independent entity" includes the:

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- (i) Utah Dairy Commission created by Section 4-22-2;
- (ii) Heber Valley Historic Railroad Authority created by Section 63H-4-102;
- (iii) Utah State Railroad Museum Authority created by Section 63H-5-102;
- (iv) Utah Science Center Authority created by Section 63H-3-103;
- (v) Utah Housing Corporation created by Section 35A-8-704;
- (vi) Utah State Fair Corporation created by Section 63H-6-103;
- (vii) Workers' Compensation Fund created by Section 31A-33-102;
- (viii) Utah State Retirement Office created by Section 49-11-201;
- (ix) School and Institutional Trust Lands Administration created by Section 53C-1-201;
- (x) School and Institutional Trust Fund Office created by Section 53D-1-201;
- ~~[(x)]~~ (xi) Utah Communications Agency Network created by Section 63C-7-201;
- ~~[(xi)]~~ (xii) Utah Energy Infrastructure Authority created by Section 63H-2-201;
- ~~[(xii)]~~ (xiii) Utah Capital Investment Corporation created by Section 63M-1-1207; and
- ~~[(xiii)]~~ (xiv) Military Installation Development Authority created by Section 63H-1-201.
- (c) Notwithstanding this Subsection (4), "independent entity" does not include:
 - (i) the Public Service Commission of Utah created by Section 54-1-1;
 - (ii) an institution within the state system of higher education;
 - (iii) a city, county, or town;
 - (iv) a local school district;
 - (v) a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts; or
 - (vi) a special service district under Title 17D, Chapter 1, Special Service District Act.
- (5) "Independent state agency" means an entity that is created by the state, but is independent of the governor's direct supervisory control.
- (6) "Money held in trust" means money maintained for the benefit of:
 - (a) one or more private individuals, including public employees;
 - (b) one or more public or private entities; or
 - (c) the owners of a quasi-public corporation.
- (7) "Public corporation" means an artificial person, public in ownership, individually

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created by the state as a body politic and corporate for the administration of a public purpose relating to the state or its citizens.

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

Section ~~{28}~~30. Repealer.

This bill repeals:

Section 51-7a-101, Title.

Section 51-7a-102, Definitions.

Section 51-7a-201, Investment of land grant trust funds.

Section 51-7a-202, State treasurer to follow "prudent investor" rule -- Standard of care.

Section 51-7a-301, Investment advisory committee -- Creation.

Section 51-7a-302, Investment advisory committee -- Duties.

†

Legislative Review Note

— as of ~~2-25-14 11:28 AM~~

— ~~Office of Legislative Research and General Counsel~~ Section 31. Effective date.

This bill takes effect on July 1, 2014.