

SB0109S01 compared with SB0109

~~deleted text~~ shows text that was in SB0109 but was deleted in SB0109S01.

inserted text shows text that was not in SB0109 but was inserted into SB0109S01.

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Senator Ann Millner proposes the following substitute bill:

SCHOOL AND INSTITUTIONAL TRUST LANDS

AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ann Millner

House Sponsor: ~~_____~~ Melvin R. Brown

LONG TITLE

General Description:

This bill amends provisions related to schools and institutional trust lands and related education funding.

Highlighted Provisions:

This bill:

- ▶ enacts language related to the distributions deposited in the Uniform School Fund;
- ▶ creates the Trust Distribution Account within the Uniform School Fund;
- ▶ amends language governing the disposition of revenues in the State School Fund;
- ▶ repeals and reenacts language related to the Invest More for Education Account;
- ▶ directs the School Children's Trust Section to review each school for compliance

SB0109S01 compared with SB0109

with applicable law;

- ▶ amends language governing the disposition of net revenues from institutional trust lands to be deposited into the respective institutional permanent funds;
- ▶ enacts language related to the distributions of investment income from institutional trust funds; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

53A-16-101, as last amended by Laws of Utah 2013, Chapter 235

53A-16-101.5, as last amended by Laws of Utah 2015, Chapter 276

53A-16-101.6, as last amended by Laws of Utah 2015, Chapter 276

53C-3-101, as last amended by Laws of Utah 2011, Chapter 247

53C-3-102, as last amended by Laws of Utah 2014, Chapter 426

53C-3-103, as last amended by Laws of Utah 2003, Chapter 226

59-10-1318, as enacted by Laws of Utah 2013, Chapter 235

ENACTS:

53A-16-115, Utah Code Annotated 1953

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

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

53A-16-101. Uniform School Fund -- Contents -- Trust Distribution Account.

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

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

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

SB0109S01 compared with SB0109

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

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

(b) The ~~[Interest and Dividends]~~ Trust Distribution Account consists of the average of:
~~[(i) interest and dividends derived from the investment of money in the permanent State School Fund referred to in Subsection (1)(a); and]~~

~~[(ii) interest on account money.]~~

(i) 4% of the average market value of the permanent State School Fund ~~{over}~~ based on an annual review each July of the past 12 consecutive quarters; and

(ii) the prior year's distribution from the Trust Distribution Account as described in Section 53A-16-101.5, increased by prior year changes in the percentage of student enrollment growth and in the consumer price index.

(3) Notwithstanding Subsection (2)(b), the distribution may not exceed 4% of the average market value of the permanent State School Fund over the past 12 consecutive quarters.

(4) The School and Institutional Trust Fund Board of Trustees created in Section 53D-1-301 shall:

(a) annually review distribution of the Trust Distribution Account; and

(b) make recommendations, if necessary, to the Legislature for changes to the formula described in Subsection (2)(b).

~~[(3)]~~ (5) (a) Upon appropriation by the Legislature, [money from the Interest and Dividends Account shall be used for] the director of the School and Institutional Trust Fund Office created in Section 53D-1-201 shall place in the Trust Distribution Account funds for:

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

(ii) the performance of duties described in Section 53A-16-101.6[-];

(iii) the School and Institutional Trust Fund Office; and

(iv) the School and Institutional Trust Fund Board of Trustees created in Section 53D-1-301.

(b) The Legislature may appropriate any remaining balance for the support of the

SB0109S01 compared with SB0109

public education system.

~~[(4) (a) There is created within the Uniform School Fund a restricted account known as the Invest More for Education Account.]~~

~~[(b) The account shall be funded by contributions deposited into the restricted account in accordance with Section 59-10-1318.]~~

~~[(c) The account shall earn interest.]~~

~~[(d) Interest earned on the account shall be deposited into the account.]~~

~~[(e) The Legislature may appropriate money from the account for the support of the public education system.]~~

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

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

(1) As used in this section:

(a) "Charter agreement" means an agreement made in accordance with Section 53A-1a-508 that authorizes the operation of a charter school.

(b) "Charter school authorizer" means the same as that term is defined in Section 53A-1a-501.3.

(c) "Charter trust land council" means a council established by a charter school governing board under this section.

(d) "Council" means a school community council or a charter trust land council.

(e) "District school" means a public school under the control of a local school board elected under Title 20A, Chapter 14, Nomination and Election of State and Local School Boards.

(f) "School community council" means a council established at a district school in accordance with Section 53A-1a-108.

(2) There is established the School LAND (Learning And Nurturing Development) Trust Program to:

(a) provide financial resources to public schools to enhance or improve student academic achievement and implement a component of a district school's school improvement plan or a charter school's charter agreement; and

(b) involve parents and guardians of a school's students in decision making regarding

SB0109S01 compared with SB0109

the expenditure of School LAND Trust Program money allocated to the school.

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

(i) from the [~~Interest and Dividends~~] Trust Distribution Account created in Section 53A-16-101; and

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

(A) the [~~interest and dividends~~] distributions from the investment of money in the permanent State School Fund deposited to the [~~Interest and Dividends~~] Trust Distribution Account [~~in the immediately preceding~~] on or about July 15 each year; and

(B) interest accrued on [~~money in the Interest and Dividends~~] the Trust Distribution Account in the immediately preceding fiscal year.

(b) The program shall be funded as provided in Subsection (3)(a) up to an amount equal to 3% of the funds provided for the Minimum School Program, pursuant to Title 53A, Chapter 17a, Minimum School Program Act, each fiscal year.

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

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

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

(ii) Any unused balance remaining from an amount appropriated under Subsection (3)(c)(i) shall be deposited in the [~~Interest and Dividends~~] Trust Distribution Account for distribution to schools in the School LAND Trust Program.

(4) (a) The State Board of Education shall allocate the money referred to in Subsection (3) annually as follows:

(i) the Utah Schools for the Deaf and the Blind shall receive funding equal to the product of:

(A) enrollment on October 1 in the prior year at the Utah Schools for the Deaf and the Blind divided by enrollment on October 1 in the prior year in public schools statewide; and

(B) the total amount available for distribution under Subsection (3);

(ii) charter schools shall receive funding equal to the product of:

(A) charter school enrollment on October 1 in the prior year, divided by enrollment on October 1 in the prior year in public schools statewide; and

SB0109S01 compared with SB0109

(B) the total amount available for distribution under Subsection (3); and

(iii) of the funds available for distribution under Subsection (3) after the allocation of funds for the Utah Schools for the Deaf and the Blind and charter schools:

(A) school districts shall receive 10% of the funds on an equal basis; and

(B) the remaining 90% of the funds shall be distributed to school districts on a per student basis.

(b) (i) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education shall make rules specifying a formula to distribute the amount allocated under Subsection (4)(a)(ii) to charter schools.

(ii) In making rules under Subsection (4)(b)(i), the State Board of Education shall:

(A) consult with the State Charter School Board; and

(B) ensure that the rules include a provision that allows a charter school in the charter school's first year of operations to receive funding based on projected enrollment, to be adjusted in future years based on actual enrollment.

(c) A school district shall distribute its allocation under Subsection (4)(a)(iii) to each school within the school district on an equal per student basis.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education may make rules regarding the time and manner in which the student count shall be made for allocation of the money under Subsection (4)(a)(iii).

(5) To receive its allocation under Subsection (4):

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

(b) a charter school shall have established a charter trust land council in accordance with Subsection (9); and

(c) the school's principal shall provide a signed, written assurance that the school is in compliance with Subsection (5)(a) or (b).

(6) (a) A council shall create a program to use its allocation under Subsection (4) to implement a component of the school's improvement plan or charter agreement, including:

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

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

(iii) a specific listing of any programs, practices, materials, or equipment which the

SB0109S01 compared with SB0109

school will need to implement a component of its school improvement plan to have a direct impact on the instruction of students and result in measurable increased student performance; and

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

(b) (i) A council shall create and vote to adopt a plan for the use of School LAND Trust Program money in a meeting of the council at which a quorum is present.

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

(c) A council shall:

(i) post a plan for the use of School LAND Trust Program money that is adopted in accordance with Subsection (6)(b) on the School LAND Trust Program website; and

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

(d) (i) The local school board of a district school shall approve or disapprove a plan for the use of School LAND Trust Program money.

(ii) If a local school board disapproves a plan for the use of School LAND Trust Program money:

(A) the local school board shall provide a written explanation of why the plan was disapproved and request the school community council who submitted the plan to revise the plan; and

(B) the school community council shall submit a revised plan in response to a local school board's request under Subsection (6)(d)(ii)(A).

(iii) Once a plan has been approved by a local school board, a school community council may amend the plan, subject to a majority vote of the school community council and local school board approval.

(e) A charter trust land council's plan for the use of School LAND Trust Program money is subject to approval by the:

(i) charter school governing board; and

(ii) charter school's charter school authorizer.

SB0109S01 compared with SB0109

(7) (a) A district school or charter school shall:

(i) implement the program as approved;

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

(iii) meet State Board of Education reporting requirements regarding financial and performance accountability of the program.

(b) (i) A district school or charter school shall prepare and post an annual report of the program on the School LAND Trust Program website each fall.

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

(iii) A summary of the report shall be provided to parents or guardians of students attending the school.

(8) On or before October 1 of each year, a school district shall record the amount of the program funds distributed to each school under Subsection (4)(c) on the School LAND Trust Program website to assist schools in developing the annual report described in Subsection (7)(b).

(9) (a) The governing board of a charter school shall establish a council, which shall prepare a plan for the use of School LAND Trust Program money that includes the elements listed in Subsection (6).

(b) (i) The membership of the council shall include parents or guardians of students enrolled at the school and may include other members.

(ii) The number of council members who are parents or guardians of students enrolled at the school shall exceed all other members combined by at least two.

(c) A charter school governing board may serve as the council that prepares a plan for the use of School LAND Trust Program money if the membership of the charter school governing board meets the requirements of Subsection (9)(b)(ii).

(d) (i) Except as provided in Subsection (9)(d)(ii), council members who are parents or guardians of students enrolled at the school shall be elected in accordance with procedures established by the charter school governing board.

(ii) Subsection (9)(d)(i) does not apply to a charter school governing board that serves as the council that prepares a plan for the use of School LAND Trust Program money.

(e) A parent or guardian of a student enrolled at the school shall serve as chair or

SB0109S01 compared with SB0109

cochair of a council that prepares a plan for the use of School LAND Trust Program money.

(10) The president or chair of a local school board or charter school governing board shall ensure that the members of the local school board or charter school governing board are provided with annual training on the requirements of this section.

Section 3. 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.

(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;

(v) public education;

(vi) real estate;

(vii) renewable resources;

(viii) risk management; and

(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:

SB0109S01 compared with SB0109

- (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 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.
- (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.
- (7) The section shall have a staff.
- (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;

SB0109S01 compared with SB0109

- (c) state statute; and
- (d) standard trust principles described in Section 53C-1-102.

(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.

(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 School and Institutional Trust Fund Office, created in Section 53D-1-201;

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

(vi) the attorney general;

(vii) the public; and

(viii) other entities as determined by the section.

(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.

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

(13) (a) The section shall provide training to the entities described in Subsection

(13)(b) on:

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

(ii) (A) a school community council established pursuant to Section 53A-1a-108; or

(B) a charter trust land council established under Section 53A-16-101.5.

(b) The section shall provide the training to:

SB0109S01 compared with SB0109

- (i) a local school board or a charter school governing board;
- (ii) a school district or a charter school; and
- (iii) a school community council.

(14) The section shall annually:

(a) review each school's compliance with applicable law, including rules adopted by the State Board of Education; and

(b) report findings to the State Board of Education.

Section 4. Section **53A-16-115** is enacted to read:

53A-16-115. Invest More for Education Account.

(1) There is created within the Uniform School Fund a restricted account known as the Invest More for Education Account.

(2) The account shall be funded by contributions deposited into the restricted account in accordance with Section 59-10-1318.

(3) The account shall earn interest.

(4) Interest earned on the account shall be deposited into the account.

(5) The Legislature may appropriate money from the account for the support of the public education system.

Section 5. Section **53C-3-101** is amended to read:

53C-3-101. Land Grant Management Fund -- Contents -- Use of money.

(1) (a) There is created an enterprise fund known as the Land Grant Management Fund.

(b) This fund shall consist of:

- (i) all revenues derived from trust lands except revenues from the sale of those lands;
- (ii) all interest earned by the fund;
- (iii) all revenues deposited in the fund in accordance with Subsection 41-22-19(3); and
- (iv) all revenues obtained from other activities of the director or administration.

(2) The director may expend money:

(a) from the Land Grant Management Fund in accordance with the approved budget for the support of director and administration activities; and

(b) deposited in the fund in accordance with Subsection 41-22-19(3) as necessary to fulfill the purposes of Subsection 41-22-19(3)(b).

(3) Except for revenues deposited under Subsection (1)(b)(iii), any amount in excess of

SB0109S01 compared with SB0109

that required to fund the budget shall be distributed to the various trust beneficiaries as of June 30 of each calendar year, and at other times determined by the director, in shares equal to the portion of total Land Grant Management Fund revenues obtained from each beneficiary's land during the accounting period.

(4) Money from the lease or rental of school trust lands or from the use, sale, or lease of resources on school trust lands, all sums paid for fees, and all forfeitures or penalties received in connection with those transactions shall be deposited in the Permanent State School Fund.

(5) Money from the lease or rental of lands acquired by the state for the benefit of an institution named in Sections 7, 8, and 12 of the Utah Enabling Act, or from the use, sale, or lease of renewable or nonrenewable resources on those lands, and all forfeitures or penalties received in connection with those transactions, shall be ~~distributed to the institution.~~ deposited into the respective permanent funds established for the benefit of an institution named in Sections 7, 8, and 12 of the Utah Enabling Act.

(6) Except for revenues deposited under Subsection (1)(b)(iii), any remaining money, including interest earned on the account, shall be distributed in pro rata shares to the various beneficiaries.

Section 6. Section 53C-3-102 is amended to read:

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

(1) (a) The director shall pay to the 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~~ and all net proceeds from

SB0109S01 compared with SB0109

other contractual arrangements 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]~~ shall be deposited into 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 credited to the appropriate fund or account, or refunded to the applicant in accordance with the action taken.

(7) Distributions to the respective institutions from the associated permanent funds created from lands granted in Sections 8 and 12 of the Utah Enabling Act shall consist of 4% of the average market value of each institutional permanent fund over the past 12 consecutive quarters.

Section ~~(5)~~7. Section **53C-3-103** is amended to read:

53C-3-103. Disposition of interest on permanent funds.

~~(1)~~ The ~~[interest and dividends]~~ trust distributions derived from the investment of funds belonging to the permanent State School Fund and ~~[the interest, dividends, and other income of]~~ the permanent funds of the respective state institutions shall be distributed for use for the maintenance of public elementary and secondary schools or the state institutions in

SB0109S01 compared with SB0109

accordance with [~~Title 51, Chapter 7, State Money Management Act~~] applicable law.

~~[(2) Realized and unrealized gains shall be retained in the Permanent State School Fund.]~~

Section ~~{6}~~8. Section **59-10-1318** is amended to read:

59-10-1318. Contribution to Invest More for Education Account.

(1) Except as provided in Section 59-10-1304, a resident or nonresident individual that files an individual income tax return under this chapter may designate on the resident or nonresident individual's individual income tax return a contribution as provided in this section to be:

- (a) deposited into the Invest More for Education Account; and
- (b) expended as provided in [~~Subsection 53A-16-101(4)~~] Section 53A-16-115.

(2) The commission shall:

(a) determine the total amount of contributions designated in accordance with this section for a taxable year; and

(b) credit the amount described in Subsection (2)(a) to the Invest More for Education Account created in [~~Subsection 53A-16-101(4)~~] Section 53A-16-115.

Section ~~{7}~~9. **Effective date**~~;~~

~~—~~ **This** ~~;~~ **-- Contingent effective date.**

(1) Sections 53C-3-101 and 53C-3-102 of this bill takes effect July 1, 2017.

(2) Except as provided in Subsection (1), this bill takes effect ~~{January}~~July 1, 2017, if the amendment to the Utah Constitution proposed by S.J.R. ~~{11}~~12, Joint Resolution on Proposal to Amend Utah Constitution -- Changes to School Funds, passes during the 2016 General Session~~{, passes the Legislature}~~ and is approved by a majority of those voting on it at the next regular general election.

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Legislative Review Note

Office of Legislative Research and General Counsel~~}~~