

HB0291S02 compared with HB0291S01

~~deleted text~~ shows text that was in HB0291S01 but was deleted in HB0291S02.

Inserted text shows text that was not in HB0291S01 but was inserted into HB0291S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Michael E. Noel proposes the following substitute bill:

SCHOOL CHILDREN'S TRUST SECTION AND BENEFICIARY

ADVOCATE AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill amends provisions regarding the School Children's Trust Section under the State Board of Education.

Highlighted Provisions:

This bill:

- ▶ creates the beneficiary advocate under the State Board of Education who:
 - shall take an oath of office as specified;
 - shall serve for a term of four years;
 - may serve multiple terms; and
 - is exempt from the Utah State Personnel Management Act;

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- ▶ amends the reasons for which the State Board of Education may remove the beneficiary advocate; and
- ▶ requires the School Children's Trust Section to annually:
 - review distribution ~~{recipient's}~~recipients' compliance with applicable laws and rules; and
 - report any findings to the appropriate governing bodies.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-16-101.6 (Superseded 07/01/17), as last amended by Laws of Utah 2016, Chapter 144

53A-16-101.6 (Effective 07/01/17), as last amended by Laws of Utah 2016, Chapters 144 and 172

53C-1-103, as last amended by Laws of Utah 2012, Chapter 224

53C-1-303, as last amended by Laws of Utah 2012, Chapter 224

53D-1-102, as last amended by Laws of Utah 2016, Chapter 144

53D-1-202, as enacted by Laws of Utah 2014, Chapter 426

53D-1-304, as enacted by Laws of Utah 2014, Chapter 426

53D-1-403, as last amended by Laws of Utah 2015, Chapter 276

53D-1-501, as enacted by Laws of Utah 2014, Chapter 426

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

Section 1. Section 53A-16-101.6 (Superseded 07/01/17) is amended to read:

53A-16-101.6 (Superseded 07/01/17). Creation of School Children's Trust Section

-- Duties.

(1) As used in this section:

(a) "Beneficiary advocate" means the individual, as an independent employee, who shall fulfill the duties prescribed in this section to the trust land beneficiaries as the primary

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beneficiary representative set forth in Subsection 53C-1-103(7).

(b) "Board" means the State Board of Education.

~~[(a)]~~ (c) "School and institutional trust lands" ~~[is-as]~~ means the same as that term is defined in Section 53C-1-103.

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

~~[(c)]~~ (e) "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 under the ~~[State Board of Education]~~ board.

~~[(3) (a) The section shall have a director.]~~

(3) (a) There is created an independent beneficiary advocate who shall:

(i) act in a fiduciary capacity to the trust and to the trust beneficiaries in accordance with the principles set forth in Section 53C-1-102; and

(ii) take an oath of office before assuming the position of beneficiary advocate as follows: "I solemnly swear to carry out my duties as beneficiary advocate with undivided loyalty to the beneficiaries, to the best of my abilities and according to law."

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

(i) economics;

(ii) energy and mineral development;

(iii) finance;

(iv) investments;

(v) public education;

(vi) real estate;

(vii) renewable resources;

(viii) risk management; and

(ix) trust law.

(c) (i) The ~~[director]~~ beneficiary advocate shall:

(A) be appointed as provided in this Subsection (3)~~[-]~~; and

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(B) except as provided in Subsection (3)(c)(ii), serve for a term of four years.

(ii) The four-year term of an individual who is the beneficiary advocate on July 1, 2017, shall expire on July 1, 2021, unless a vacancy occurs.

(iii) The beneficiary advocate may serve more than one term.

(iv) The beneficiary advocate shall notify the board whether the beneficiary advocate is willing to be considered for reappointment to another term no later than four months before the end of the current term.

(v) The board shall announce whether the beneficiary advocate is reappointed for another term no later than three months before the end of the current term.

(d) [The] When a vacancy for the position of beneficiary advocate occurs, the School and Institutional Trust Lands Board of Trustees nominating committee shall submit to the [State Board of Education] board the name of one [person] individual to serve as [director] beneficiary advocate.

(e) The [State Board of Education] board may:

(i) appoint the [person] individual described in Subsection (3)(d) to serve as [director] beneficiary advocate; or

(ii) deny the appointment of the [person] individual described in Subsection (3)(d) to serve as [director] beneficiary advocate.

(f) If the [State Board of Education] board denies an appointment under this Subsection (3):

(i) the [State Board of Education] board 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] board shall follow the procedures and requirements of this Subsection (3) until the [State Board of Education] board appoints a [director] beneficiary advocate.

(g) (i) The [State Board of Education] board may remove the [director] beneficiary advocate only:

(A) by majority vote [of a quorum] of all board members in an open and public meeting after proper notice and the inclusion of the removal item on the agenda[-]; and

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(B) for neglect of fiduciary duty, malfeasance, gross negligence, incapacitation, or insubordination for the failure to follow the rules, policies, and directives of the board for the proper administration of the School Land Trust Program.

(ii) The termination of an individual under this Subsection (3)(g) is effective immediately and creates a vacancy in the position of the beneficiary advocate.

(h) The position of beneficiary advocate is exempt from the career service provisions of Title 67, Chapter 19, Utah State Personnel Management Act.

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

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

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

(5) (a) The [director] beneficiary advocate shall annually submit a proposed section budget to the [State Board of Education] board.

(b) After approving a section budget, the [State Board of Education] board shall annually:

(i) receive input on the beneficiary advocate's performance from the chair of the board and director of:

(A) the School and Institutional Trust Lands Administration; and

(B) the School and Institutional Trust Fund Office;

(ii) establish the range and compensation of the beneficiary advocate in line with comparable positions in state government, the responsibilities of the position, and the qualifications required in Subsection (3)(b);

(iii) report the beneficiary advocate's compensation to the Public Education Appropriations Subcommittee; and

(iv) propose the approved budget to the Legislature.

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

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

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

(7) The section shall have a staff.

(8) The [section] beneficiary advocate 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.

(9) The [section] beneficiary advocate shall promote:

(a) productive use of school and institutional trust lands for the financial support of the trust beneficiaries; 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] beneficiary advocate 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] beneficiary advocate shall provide independent oversight on the prudent and profitable management of the trust and report annually to the [State Board of

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Education] board and the Legislature.

(12) The [section] beneficiary advocate 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:

(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 K-12 trust distribution recipients' compliance with applicable law, including applicable rules, policies, and directives adopted by the board; and

(b) report findings to the board and other appropriate governing bodies, including:

(i) the School and Institutional Trust Lands Administration created in Section 53C-1-201 and the School and Institutional Trust Lands Board of Trustees established in Section 53C-1-202;

(ii) the School and Institutional Trust Fund Office created in Section 53D-1-201 and the School and Institutional Trust Fund Board of Trustees created in Section 53D-1-301; and

(iii) other designated representatives and organizations of trust beneficiaries of school and institutional trust lands.

Section 2. Section 53A-16-101.6 (Effective 07/01/17) is amended to read:

53A-16-101.6 (Effective 07/01/17). Creation of School Children's Trust Section --

Duties.

(1) As used in this section:

(a) "Beneficiary advocate" means the individual, as an independent employee, who shall fulfill the duties prescribed in this section to the trust land beneficiaries as the primary beneficiary representative set forth in Subsection 53C-1-103(7).

(b) "Board" means the State Board of Education.

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~~[(a)]~~ (c) "School and institutional trust lands" [is-as] means the same as that term is defined in Section 53C-1-103.

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

~~[(c)]~~ (e) "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 under the State Board of Education.

~~[(3) (a) The section shall have a director.]~~

(3) (a) There is created an independent beneficiary advocate who shall:

(i) act in a fiduciary capacity to the trust and to the trust beneficiaries in accordance with the principles set forth in Section 53C-1-102; and

(ii) take an oath of office before assuming the position of beneficiary advocate and as the director as follows: "I solemnly swear to carry out my duties as beneficiary advocate with undivided loyalty to the beneficiaries, to the best of my abilities and according to law."

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

(i) economics;

(ii) energy and mineral development;

(iii) finance;

(iv) investments;

(v) public education;

(vi) real estate;

(vii) renewable resources;

(viii) risk management; and

(ix) trust law.

(c) (i) The ~~[director]~~ beneficiary advocate shall:

(A) be appointed as provided in this Subsection (3)~~[-]~~; and

(B) except as provided in Subsection (3)(c)(ii), serve for a term of four years.

(ii) The four-year term of an individual who is the beneficiary advocate on July 1,

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2017, shall expire on July 1, 2021, unless a vacancy occurs.

(iii) The beneficiary advocate may serve more than one term.

(iv) The beneficiary advocate shall notify the board whether the beneficiary advocate is willing to be considered for reappointment to another term no later than four months before the end of the current term.

(v) The board shall announce whether the beneficiary advocate is reappointed for another term no later than three months before the end of the current term.

(d) [The] When a vacancy for the position of beneficiary advocate occurs, the School and Institutional Trust Lands Board of Trustees nominating committee shall submit to the [State Board of Education] board the name of one [person] individual to serve as [director] beneficiary advocate.

(e) The [State Board of Education] board may:

(i) appoint the [person] individual described in Subsection (3)(d) to serve as [director] beneficiary advocate; or

(ii) deny the appointment of the [person] individual described in Subsection (3)(d) to serve as [director] beneficiary advocate.

(f) If the [State Board of Education] board denies an appointment under this Subsection (3):

(i) the [State Board of Education] board 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] board shall follow the procedures and requirements of this Subsection (3) until the [State Board of Education] board appoints a [director] beneficiary advocate.

(g) (i) The [State Board of Education] board may remove the [director] beneficiary advocate only:

(A) by majority vote [of a quorum] of all board members in an open and public meeting after proper notice and the inclusion of the removal item on the agenda[-]; and

(B) for neglect of fiduciary duty, malfeasance, gross negligence, incapacitation or insubordination for the failure to follow the rules, policies and directives of the board for the

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proper administration of the School Land Trust Program.

(i) The termination of an individual under this Subsection (3)(g) is effective immediately and creates a vacancy in the position of the beneficiary advocate.

(h) The position of beneficiary advocate is exempt from the career service provisions of Title 67, Chapter 19, Utah State Personnel Management Act.

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

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

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

(5) (a) The [director] beneficiary advocate shall annually submit a proposed section budget to the [State Board of Education] board.

(b) After approving a section budget, the [State Board of Education] board shall annually:

(i) receive input on the beneficiary advocate's performance from the chair of the board and director of:

(A) the School and Institutional Trust Lands Administration; and

(B) the School and Institutional Trust Fund Office;

(ii) establish the range and compensation of the beneficiary advocate in line with comparable positions in state government, the responsibilities of the position, and the qualifications required in Subsection (3)(b);

(iii) report the beneficiary advocate's compensation to the Public Education Appropriations Subcommittee; and

(iv) 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] beneficiary advocate's attendance to preserve confidentiality; or

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

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(7) The section shall have a staff.

(8) The [section] beneficiary advocate 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.

(9) The [section] beneficiary advocate shall promote:

(a) productive use of school and institutional trust lands for the financial support of the trust beneficiaries; 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] beneficiary advocate 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] beneficiary advocate shall provide independent oversight on the prudent and profitable management of the trust and report annually to the [State Board of Education] board and the Legislature.

(12) The [section] beneficiary advocate shall provide information requested by a

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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:

(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] K-12 trust distribution recipients' compliance with applicable law, including applicable rules, policies, and directives adopted by the [State Board of Education] board; and

(b) report findings to the [State Board of Education:] board and other appropriate governing bodies, including:

(i) the School and Institutional Trust Lands Administration created in Section 53C-1-201 and the School and Institutional Trust Lands Board of Trustees established in Section 53C-1-202;

(ii) the School and Institutional Trust Fund Office created in Section 53D-1-201 and the School and Institutional Trust Fund Board of Trustees created in Section 53D-1-301; and

(iii) other designated representatives and organizations of trust beneficiaries of school and institutional trust lands.

Section 3. Section **53C-1-103** is amended to read:

53C-1-103. Definitions.

As used in this title:

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

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

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

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

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

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

(7) "Primary beneficiary representative" means the beneficiary advocate appointed by the State Board of Education acting with undivided loyalty consistent with the fiduciary duties and principles set forth in Section 53C-1-102 for the financial support of and as representative on behalf of the following trusts:

(a) the trust established for common schools;

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

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

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

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

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

Section 4. Section 53C-1-303 is amended to read:

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

Contract for services.

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

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

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

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

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

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

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budget to the governor;

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

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

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

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

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

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

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

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

(n) respond in writing within a reasonable time to a request by the board or the primary beneficiary representative's designee regarding a trust listed in Subsection 53C-1-103(7) for responses to questions on policies and practices affecting the management of the trust.

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

(3) The director may:

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

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

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

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

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

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

~~{Section 1. Section 53A-16-101.6 (Superseded 07/01/17) is amended to read:~~

~~———— 53A-16-101.6 (Superseded 07/01/17). Creation of School Children's Trust Section~~
~~**-- Duties:**~~

~~———— (1) As used in this section:~~

~~———— (a) "Beneficiary advocate" means the individual, as an independent employee, who shall fulfill the duties prescribed in this section to the trust land beneficiaries as the primary beneficiary representative set forth in Section 53C-1-103(7);~~

~~———— (b) "Board" means the State Board of Education;~~

~~———— [(a)] (c) "School and institutional trust lands" is as defined in Section 53C-1-103;~~

~~———— [(b)] (d) "Section" means the School Children's Trust Section created in this section;~~

~~———— [(c)] (e) "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 under the [State Board of Education] board.~~

~~———— [(3)] (a) The section shall have a director.}]~~

~~———— (3) (a) There is created an independent beneficiary advocate who shall:~~

~~———— (i) act in a fiduciary capacity to the trust and to the trust beneficiaries in accordance~~

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~~with the principles set forth in Section 53C-1-102; and~~

~~—— (ii) take an oath of office before assuming the position of beneficiary advocate as follows: "I solemnly swear to carry out my duties as beneficiary advocate with undivided loyalty to the beneficiaries, to the best of my abilities and according to law."~~

~~—— (b) The [director] beneficiary advocate shall have professional qualifications and expertise in the areas generating revenue to the trust, including:~~

~~—— (i) economics;~~

~~—— (ii) energy and mineral development;~~

~~—— (iii) finance;~~

~~—— (iv) investments;~~

~~—— (v) public education;~~

~~—— (vi) real estate;~~

~~—— (vii) renewable resources;~~

~~—— (viii) risk management; and~~

~~—— (ix) trust law.~~

~~—— (c) (i) The [director] beneficiary advocate shall:~~

~~—— (A) be appointed as provided in this Subsection (3)[.]; and~~

~~—— (B) except as provided in Subsection (3)(c)(ii), serve for a term of four years.~~

~~—— (ii) The four-year term of an individual who is the beneficiary advocate on July 1, 2017, shall expire on July 1, 2021, unless a vacancy occurs.~~

~~—— (iii) The beneficiary advocate may serve more than one term.~~

~~—— (iv) The beneficiary advocate shall notify the board whether the beneficiary advocate is willing to be considered for reappointment to another term no later than four months before the end of the current term.~~

~~—— (v) The board shall announce whether the beneficiary advocate is reappointed for another term no later than three months before the end of the current term.~~

~~—— (d) [The] When a vacancy for the position of beneficiary advocate occurs, the School and Institutional Trust Lands Board of Trustees nominating committee shall submit to the [State Board of Education] board the name of one [person] individual to serve as [director] beneficiary advocate.~~

~~—— (e) The [State Board of Education] board may:~~

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~~—— (i) appoint the [person] individual described in Subsection (3)(d) to serve as [director] beneficiary advocate; or~~

~~—— (ii) deny the appointment of the [person] individual described in Subsection (3)(d) to serve as [director] beneficiary advocate.~~

~~—— (f) If the [State Board of Education] board denies an appointment under this Subsection (3):~~

~~—— (i) the [State Board of Education] board 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] board shall follow the procedures and requirements of this Subsection (3) until the [State Board of Education] board appoints a [director] beneficiary advocate.~~

~~—— (g) (i) The [State Board of Education] board may remove the [director] beneficiary advocate only:~~

~~—— (A) by majority vote [of a quorum] of all board members in an open and public meeting after proper notice and the inclusion of the removal item on the agenda[.]; and~~

~~—— (B) for neglect of fiduciary duty, malfeasance, gross negligence, incapacitation, or insubordination for the failure to follow the rules, policies, and directives of the board for the proper administration of the School Land Trust Program.~~

~~—— (ii) The termination of an individual under this Subsection (3)(g) is effective immediately and creates a vacancy in the position of the beneficiary advocate.~~

~~—— (h) The position of beneficiary advocate is exempt from the career service provisions of Title 67, Chapter 19, Utah State Personnel Management Act.~~

~~—— (4) The [State Board of Education] board shall make rules regarding:~~

~~—— (a) regular reporting from the [School Children's Trust Section director] beneficiary advocate to the [State Board of Education,] board, to allow the [State Board of Education] board to fulfill its duties in also representing the trust beneficiaries; and~~

~~—— (b) the day-to-day reporting of the [School Children's Trust Section director] beneficiary advocate.~~

~~—— (5) (a) The [director] beneficiary advocate shall annually submit a proposed section~~

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~~budget to the [State Board of Education] board:~~

~~—— (b) After approving a section budget, the [State Board of Education] board shall annually:~~

~~—— (i) receive input on the beneficiary advocate's performance from the chair of the board and director of:~~

~~—— (A) the School and Institutional Trust Lands Administration; and~~

~~—— (B) the School and Institutional Trust Fund Office;~~

~~—— (ii) establish the range and compensation of the beneficiary advocate in line with comparable positions in state government, the responsibilities of the position, and the qualifications required in Subsection (3)(b):~~

~~—— (iii) report the beneficiary advocate's compensation to the Public Education Appropriations Subcommittee; and~~

~~—— (iv) propose the approved budget to the Legislature.~~

~~—— (6) The [director] beneficiary advocate is entitled to attend any presentation, discussion, meeting, or other gathering concerning the trust, subject to:~~

~~—— (a) provisions of law prohibiting the [director's] beneficiary advocate's attendance to preserve confidentiality; or~~

~~—— (b) other provisions of law that the [director's] beneficiary advocate's attendance would violate.~~

~~—— (7) The section shall have a staff.~~

~~—— (8) The [section] beneficiary advocate 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.~~

~~—— (9) The [section] beneficiary advocate shall promote:~~

~~—— (a) productive use of school and institutional trust lands for the financial support of the trust beneficiaries; 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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~~—— (10) The [section] beneficiary advocate 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] beneficiary advocate shall provide independent oversight on the prudent and profitable management of the trust and report annually to the [State Board of Education] board and the Legislature.~~

~~—— (12) The [section] beneficiary advocate 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:~~

~~—— (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 K-12 trust distribution recipient's compliance with applicable law, including~~

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~~applicable rules, policies, and directives adopted by the board; and~~

~~— (b) report findings to the board and other appropriate governing bodies, including:~~

~~— (i) the School and Institutional Trust Lands Administration created in Section 53C-1-201 and the School and Institutional Trust Lands Board of Trustees established in Section 53C-1-202;~~

~~— (ii) the School and Institutional Trust Fund Office created in Section 53D-1-201 and the School and Institutional Trust Fund Board of Trustees created in Section 53D-1-301; and~~

~~— (iii) other designated representatives and organizations of trust beneficiaries of school and institutional trust lands;~~

~~Section 2. Section 53A-16-101.6 (Effective 07/01/17) is amended to read:~~

~~53A-16-101.6 (Effective 07/01/17). Creation of School Children's Trust Section ==~~
Duties:

~~— (1) As used in this section:~~

~~— (a) "Beneficiary advocate" means the individual, as an independent employee, who shall fulfill the duties prescribed in this section to the trust land beneficiaries as the primary beneficiary representative set forth in Section 53C-1-103(7).~~

~~— (b) "Board" means the State Board of Education.~~

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

~~— [(b)] (d) "Section" means the School Children's Trust Section created in this section.~~

~~— [(c)] (e) "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 under the State Board of Education.~~

~~— [(3) (a) The section shall have a director.]~~

~~— (3) (a) There is created an independent beneficiary advocate who shall:~~

~~— (i) act in a fiduciary capacity to the trust and to the trust beneficiaries in accordance with the principles set forth in Section 53C-1-102; and~~

~~— (ii) take an oath of office before assuming the position of beneficiary advocate and as the director as follows: "I solemnly swear to carry out my duties as beneficiary advocate with~~

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~~undivided loyalty to the beneficiaries, to the best of my abilities and according to law."~~

~~—— (b) The [director] beneficiary advocate shall have professional qualifications and expertise in the areas generating revenue to the trust, including:~~

~~—— (i) economics;~~

~~—— (ii) energy and mineral development;~~

~~—— (iii) finance;~~

~~—— (iv) investments;~~

~~—— (v) public education;~~

~~—— (vi) real estate;~~

~~—— (vii) renewable resources;~~

~~—— (viii) risk management; and~~

~~—— (ix) trust law.~~

~~—— (c) (i) The [director] beneficiary advocate shall:~~

~~—— (A) be appointed as provided in this Subsection (3)[.]; and~~

~~—— (B) except as provided in Subsection (3)(c)(ii), serve for a term of four years.~~

~~—— (ii) The four-year term of an individual who is the beneficiary advocate on July 1, 2017, shall expire on July 1, 2021, unless a vacancy occurs.~~

~~—— (iii) The beneficiary advocate may serve more than one term.~~

~~—— (iv) The beneficiary advocate shall notify the board whether the beneficiary advocate is willing to be considered for reappointment to another term no later than four months before the end of the current term.~~

~~—— (v) The board shall announce whether the beneficiary advocate is reappointed for another term no later than three months before the end of the current term.~~

~~—— (d) [The] When a vacancy for the position of beneficiary advocate occurs, the School and Institutional Trust Lands Board of Trustees nominating committee shall submit to the [State Board of Education] board the name of one [person] individual to serve as [director] beneficiary advocate.~~

~~—— (e) The [State Board of Education] board may:~~

~~—— (i) appoint the [person] individual described in Subsection (3)(d) to serve as [director] beneficiary advocate; or~~

~~—— (ii) deny the appointment of the [person] individual described in Subsection (3)(d) to~~

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serve as ~~[director]~~ beneficiary advocate:

~~—— (f) If the [State Board of Education] board denies an appointment under this Subsection (3):~~

~~—— (i) the [State Board of Education] board 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] board shall follow the procedures and requirements of this Subsection (3) until the [State Board of Education] board appoints a [director] beneficiary advocate:~~

~~—— (g) (i) The [State Board of Education] board may remove the [director] beneficiary advocate only:~~

~~—— (A) by majority vote [of a quorum] of all board members in an open and public meeting after proper notice and the inclusion of the removal item on the agenda~~]; and~~~~

~~—— (B) for neglect of fiduciary duty, malfeasance, gross negligence, incapacitation or insubordination for the failure to follow the rules, policies and directives of the board for the proper administration of the School Land Trust Program.~~

~~—— (ii) The termination of an individual under this Subsection (3)(g) is effective immediately and creates a vacancy in the position of the beneficiary advocate.~~

~~—— (h) The position of beneficiary advocate is exempt from the career service provisions of Title 67, Chapter 19, Utah State Personnel Management Act.~~

~~—— (4) The [State Board of Education] board shall make rules regarding:~~

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

~~—— (b) the day-to-day reporting of the [School Children's Trust Section director] beneficiary advocate:~~

~~—— (5) (a) The [director] beneficiary advocate shall annually submit a proposed section budget to the [State Board of Education] board:~~

~~—— (b) After approving a section budget, the [State Board of Education] board shall annually:~~

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~~—— (i) receive input on the beneficiary advocate's performance from the chair of the board and director of:~~

~~—— (A) the School and Institutional Trust Lands Administration; and~~

~~—— (B) the School and Institutional Trust Fund Office;~~

~~—— (ii) establish the range and compensation of the beneficiary advocate in line with comparable positions in state government, the responsibilities of the position, and the qualifications required in Subsection (3)(b);~~

~~—— (iii) report the beneficiary advocate's compensation to the Public Education Appropriations Subcommittee; and~~

~~—— (iv) 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] beneficiary advocate's attendance to preserve confidentiality; or~~

~~—— (b) other provisions of law that the [director's] beneficiary advocate attendance would violate.~~

~~—— (7) The section shall have a staff.~~

~~—— (8) The [section] beneficiary advocate 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.~~

~~—— (9) The [section] beneficiary advocate shall promote:~~

~~—— (a) productive use of school and institutional trust lands for the financial support of the trust beneficiaries; 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] beneficiary advocate shall provide representation, advocacy, and input:~~

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

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~~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] beneficiary advocate shall provide independent oversight on the prudent and profitable management of the trust and report annually to the [State Board of Education] board and the Legislature.~~

~~—— (12) The [section] beneficiary advocate 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:~~

~~—— (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] K-12 trust distribution recipient's compliance with applicable law, including applicable rules, policies, and directives adopted by the [State Board of Education] board; and~~

~~—— (b) report findings to the [State Board of Education.] board and other appropriate~~

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governing bodies, including:

~~—— (i) the School and Institutional Trust Lands Administration created in Section 53C-1-201 and the School and Institutional Trust Lands Board of Trustees established in Section 53C-1-202;~~

~~—— (ii) the School and Institutional Trust Fund Office created in Section 53D-1-201 and the School and Institutional Trust Fund Board of Trustees created in Section 53D-1-301; and~~

~~—— (iii) other designated representatives and organizations of trust beneficiaries of school and institutional trust lands:~~

~~—— Section 3. Section 53C-1-103 is amended to read:~~

~~—— **53C-1-103. Definitions.**~~

~~—— As used in this title:~~

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

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

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

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

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

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

~~—— (7) "Primary beneficiary representative" means the beneficiary advocate appointed by the State Board of Education acting with undivided loyalty consistent with the fiduciary duties and principles set forth in Section 53C-1-102 for the financial support of and as representative on behalf of the following trusts:~~

~~—— (a) the trust established for common schools;~~

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

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

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

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

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

~~— (9) The director of the School and Institutional Trust Lands Administration;~~ (5) The director shall use best efforts to provide independent and separate space for the beneficiary advocate created in Section 53A-16-101.6, with costs charged to the ~~{section}~~ School Children's Trust Section for the use of the facilities equal to those charged to divisions in the administration.

Section ~~{4}~~ 5. Section **53D-1-102** is amended 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) "Beneficiary advocate" means the same as that term is defined in Section 53A-16-101.6.

~~[(3)]~~ (4) "Board" means the board of trustees established in Section 53D-1-301.

~~[(4)]~~ (5) "Director" means the director of the office.

~~[(5)]~~ (6) "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)]~~ (7) "Nominating committee" means the committee established under Section 53D-1-501.

~~[(7)]~~ (8) "Office" means the School and Institutional Trust Fund Office, created in Section 53D-1-201.

~~[(8)]~~ (9) "School children's trust section" means the School Children's Trust Section under the State Board of Education, established in Section 53A-16-101.6.

~~[(9)]~~ (10) "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 ~~5~~6. Section **53D-1-202** is amended 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~~] beneficiary advocate access to all office records and personnel as necessary for board members and the [~~director of the school children's trust section~~] beneficiary advocate 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~~] beneficiary advocate shall maintain confidentiality of information they obtain from office records and personnel.

Section ~~6~~7. Section **53D-1-304** is amended to read:

53D-1-304. Board meetings.

(1) The board shall hold at least nine meetings per year to conduct business.

(2) The board chair 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~~] beneficiary advocate.

(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 ~~7~~8. Section **53D-1-403** is amended to read:

53D-1-403. Reports.

(1) At least annually, the director shall report in person to the Legislative Management

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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 school community councils, created under Section 53A-1a-108, and charter trust land councils, established under Section 53A-16-101.5 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.

(5) The director shall:

(a) invite the [~~director of the school children's trust section~~] beneficiary advocate 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~~] beneficiary advocate:

(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~~] beneficiary advocate.

Section ~~†8†~~9. Section **53D-1-501** is amended to read:

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;

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(b) two members, appointed by the [~~director of the school children's trust section~~] beneficiary advocate, 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 Subsection (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.

(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.