

TRUST LANDS AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill deals with school and institutional trusts lands.

Highlighted Provisions:

This bill:

▶ provides that the School and Institutional Trust Lands Administration is exempt from a portion of Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

▶ states that the director of the School and Institutional Trust Lands Administration may make determinations regarding the management, protection, and conservation of plant species proposed for designation as endangered or threatened under the Endangered Species Act of 1973;

▶ modifies the procedure for the sale of trust lands;

▶ authorizes the director of the School and Institutional Trust Lands Administration to enter into an agreement with a county or a municipality concerning the applicability of a local ordinance to trust lands; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **53C-1-201**, as last amended by Laws of Utah 2016, Chapter 193

30 **53C-1-303**, as last amended by Laws of Utah 2012, Chapter 224

31 **53C-2-202**, as enacted by Laws of Utah 1994, Chapter 294

32 **53C-4-102**, as last amended by Laws of Utah 2011, Chapter 247

33

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

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

36 **53C-1-201. Creation of administration -- Purpose -- Director -- Participation in**
37 **Risk Management Fund.**

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

40 (b) The administration shall manage all school and institutional trust lands and assets
41 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation
42 of Revenue from Trust Lands, and Title 53D, Chapter 1, School and Institutional Trust Fund
43 Management Act.

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

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

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

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

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

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

57 (c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah
58 Administrative Rulemaking Act, except that the administration is not subject to Subsections

59 63G-3-301(5), (6), and (7) and Section 63G-3-601, and the director, with the board's approval,
60 may establish a procedure for the expedited approval of rules, based on written findings by the
61 director showing:

- 62 (i) the changes in business opportunities affecting the assets of the trust;
- 63 (ii) the specific business opportunity arising out of those changes which may be lost
64 without the rule or changes to the rule;
- 65 (iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without
66 causing the loss of the specific opportunity;
- 67 (iv) approval by at least five board members; and
- 68 (v) that the director has filed a copy of the rule and a rule analysis, stating the specific
69 reasons and justifications for its findings, with the Office of Administrative Rules and notified
70 interested parties as provided in Subsection 63G-3-301(10).
- 71 (d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel
72 Management Act, except as provided in this Subsection (3)(d).
- 73 (ii) The board may approve, upon recommendation of the director, that exemption for
74 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable
75 the administration to efficiently fulfill its responsibilities under the law. The director shall
76 consult with the executive director of the Department of Human Resource Management prior
77 to making such a recommendation.
- 78 (iii) The positions of director, deputy director, associate director, assistant director,
79 legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs
80 officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).
- 81 (iv) Salaries for exempted positions, except for the director, shall be set by the director,
82 after consultation with the executive director of the Department of Human Resource
83 Management, within ranges approved by the board. The board and director shall consider
84 salaries for similar positions in private enterprise and other public employment when setting
85 salary ranges.
- 86 (v) The board may create an annual incentive and bonus plan for the director and other
87 administration employees designated by the board, based upon the attainment of financial
88 performance goals and other measurable criteria defined and budgeted in advance by the board.
- 89 (e) The administration shall comply with Title 63G, Chapter 6a, Utah Procurement

90 Code, except where the board approves, upon recommendation of the director, exemption from
91 the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3,
92 Utah Administrative Rulemaking Act, for procurement, which enable the administration to
93 efficiently fulfill its responsibilities under the law.

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

96 (ii) The following fees of the administration are subject to the requirements of Section
97 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change,
98 reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral
99 assignment, electronic payment, and processing.

100 (g) (i) The administration is not subject to Subsection 63J-1-206(3)(f).

101 (ii) Before transferring appropriated funds between line items, the administration shall
102 submit a proposal to the board for its approval.

103 (iii) If the board gives approval to a proposal to transfer appropriated funds between
104 line items, the administration shall submit the proposal to the Legislative Executive
105 Appropriations Committee for its review and recommendations.

106 (iv) The Legislative Executive Appropriations Committee may recommend:

107 (A) that the administration transfer the appropriated funds between line items;

108 (B) that the administration not transfer the appropriated funds between line items; or

109 (C) to the governor that the governor call a special session of the Legislature to

110 supplement the appropriated budget for the administration.

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

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

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

121 (6) In connection with joint ventures and other transactions involving trust lands and
122 minerals approved under Sections 53C-1-303 and 53C-2-401, the administration, with board
123 approval, may become a member of a limited liability company under Title 48, Chapter 3a,
124 Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section
125 48-3a-1405 and is considered a person under Section 48-3a-102.

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

128 Section 2. Section 53C-1-303 is amended to read:

129 **53C-1-303. Responsibilities of director -- Budget review -- Legal counsel --**
130 **Contract for services.**

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

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

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

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

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

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

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

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

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

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

150 (j) permit the primary beneficiary representative's designee regarding a trust listed in
151 Subsection 53C-1-103(7) reasonable access to inspect records, documents, and other trust

152 property pertaining to that trust, provided that the primary beneficiary representative's designee
153 shall maintain confidentiality if confidentiality is required of the director;

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

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

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

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

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

168 (3) The director may:

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

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

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

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

178 (e) with the approval of the board enter into joint ventures and other business
179 arrangements consistent with the purposes of the trust[-]; and

180 (f) enter into an agreement with a county or municipality or both concerning the
181 applicability of a local ordinance to trust lands, notwithstanding Sections [10-9a-304](#) and
182 [17-27a-304](#).

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

187 Section 3. Section 53C-2-202 is amended to read:

188 **53C-2-202. Endangered and threatened plant species.**

189 The director may make determinations concerning the management, protection, and
190 conservation of plant species officially designated as endangered or threatened, or proposed for
191 designation as endangered or threatened, under the federal Endangered Species Act of 1973, as
192 amended, on trust lands.

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

194 **53C-4-102. Sale of trust lands -- Fair market value -- Determination of sale --**
195 **Advertising proposed sales -- Sale procedures -- Defaults.**

196 (1) Trust lands may not be sold for less than the fair market value.

197 (2) (a) The director shall determine whether disposal or retention of all or a portion of a
198 property interest in trust lands is in the best interest of the trust.

199 (b) When it is determined that the disposal of an interest in trust lands is in the best
200 interest of the applicable trust, the transaction shall be accomplished in an orderly and timely
201 manner.

202 (3) The director shall advertise any proposed sale, lease, or exchange of an interest in
203 trust lands in a reasonable manner consistent with the director's fiduciary responsibilities.

204 (4) (a) Any tract of trust land may be subdivided and sold, leased, or exchanged in
205 accordance with a plan, contract, or other action designating the land to be subdivided that is
206 approved by the director.

207 (b) The director may survey the tract and direct its subdivision.

208 (c) A plat of the survey shall be filed with the county recorder of the county in which
209 the land is located and with the administration.

210 (5) Sale conditions, including qualification of prospective purchasers, shall be in
211 accordance with accepted mortgage lending and real estate practices.

212 (6) Upon the sale of land, the director shall issue to the purchaser a certificate of sale
213 which describes the land purchased and states the amount paid, the amount due, and the time

214 when the principal and interest will become due.

215 (7) Upon payment in full of principal and interest [~~and the surrender of the original~~
216 ~~certificate of sale for any tract of land sold~~], payment in full of any amounts required to be paid
217 for the partial release of property, or acceptance of appropriate conveyance documents in
218 satisfaction of a land exchange, the governor, or the governor's designee, shall issue a patent to
219 the purchaser, heir, assignee, successor in interest, or other grantee as determined by the
220 director.

221 (8) (a) If a purchaser of trust lands defaults in the payment of any installment of
222 principal or interest due under the terms of the contract of sale, the director shall notify the
223 purchaser that if the default is not corrected within 30 days after issuance of the notice the
224 director shall proceed with any remedy which the administration may pursue under law or the
225 contract of sale.

226 (b) The notice shall be sent by registered or certified mail to the purchaser at the latest
227 address as shown by the records of the administration.

228 (c) If the default is not corrected by compliance with the requirements of the notice of
229 default within the time provided by the notice, the director may pursue any available remedy
230 under the contract of sale, including forfeiture.

231 (d) If forfeited lands are sold again to the same purchaser, the sale may be made by a
232 new and independent contract without regard to the forfeited agreement.