

HB0253S01 compared with HB0253

~~{deleted text}~~ shows text that was in HB0253 but was deleted in HB0253S01.

Inserted text shows text that was not in HB0253 but was inserted into HB0253S01.

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Representative V. Lowry Snow proposes the following substitute bill:

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~~

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~~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 }~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

Risk Management Fund.

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

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

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

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

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

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

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

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

(c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that the administration is not subject to Subsections 63G-3-301(5), (6), and (7) and Section 63G-3-601, and the director, with the board's approval, may establish a procedure for the expedited approval of rules, based on written findings by the director showing:

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

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

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

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

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

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

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

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

(iv) Salaries for exempted positions, except for the director, shall be set by the director,

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

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

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

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

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

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

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

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

(iv) The Legislative Executive Appropriations Committee may recommend:

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

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

(C) to the governor that the governor call a special session of the Legislature to supplement the appropriated budget for the administration.

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

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

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

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

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

Section 2. Section ~~{53C-1-303}~~53C-2-202 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 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~~

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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;~~

~~—— (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~~

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~~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[.]; and~~

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

~~—— (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 3. Section 53C-2-202 is amended to read:~~

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

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

Section ~~{4}~~3. Section **53C-4-102** is amended to read:

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

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

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

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

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

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

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approved by the director.

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

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

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

(6) Upon the sale of land, the director shall issue to the purchaser a certificate of sale which describes the land purchased and states the amount paid, the amount due, and the time when the principal and interest will become due.

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

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

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

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

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

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Legislative Review Note

~~Office of Legislative Research and General Counsel~~ Section 4. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.