

1 STATE INSTITUTIONAL TRUST LANDS

2 ADMINISTRATION AMENDMENTS

3 2020 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: Ralph Okerlund

6 House Sponsor: Carl R. Albrecht

7

8 LONG TITLE

9 General Description:

10 This bill addresses the administration of state institutional trust lands.

11 Highlighted Provisions:

12 This bill:

- 13 ▶ provides circumstances for when a meeting of the board may be closed; and
- 14 ▶ makes technical and conforming changes.

15 Money Appropriated in this Bill:

16 None

17 Other Special Clauses:

18 None

19 Utah Code Sections Affected:

20 AMENDS:

21 **53C-1-201**, as last amended by Laws of Utah 2019, Chapters 454 and 456

22

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

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

25 **53C-1-201. Creation of administration -- Purpose -- Director -- Participation in**

26 **Risk Management Fund.**

27 (1) (a) There is established within state government the School and Institutional Trust



28 Lands Administration.

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

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

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

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

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

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

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

46 (c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah
47 Administrative Rulemaking Act, except that the administration is not subject to Subsections
48 63G-3-301(5), (6), (7), and (13) and Section 63G-3-601, and the director, with the board's
49 approval, may establish a procedure for the expedited approval of rules, based on written
50 findings by the director showing:

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

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

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

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

57 (v) that the director has filed a copy of the rule and a rule analysis, stating the specific
58 reasons and justifications for ~~[its]~~ the director's findings, with the Office of Administrative

59 Rules and notified interested parties as provided in Subsection 63G-3-301(10).

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

62 (ii) (A) The board may approve, upon recommendation of the director, that exemption
63 for specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to
64 enable the administration to efficiently fulfill [its] the administration's responsibilities under the
65 law.

66 (B) The director shall consult with the executive director of the Department of Human
67 Resource Management [~~prior to~~] before making [such] a recommendation under Subsection
68 (3)(d)(ii)(A).

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

72 (iv) (A) [~~Salaries~~] The director shall set salaries for exempted positions, except for the
73 director, [~~shall be set by the director,~~] after consultation with the executive director of the
74 Department of Human Resource Management, within ranges approved by the board.

75 (B) The board and director shall consider salaries for similar positions in private
76 enterprise and other public employment when setting salary ranges.

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

80 (e) The administration shall comply with:

81 (i) subject to Subsection (8), Title 52, Chapter 4, Open and Public Meetings Act;

82 (ii) Title 63G, Chapter 2, Government Records Access and Management Act; and

83 (iii) Title 63G, Chapter 6a, Utah Procurement Code, except where the board approves,
84 upon recommendation of the director, exemption from the Utah Procurement Code, and
85 simultaneous adoption of rules under Title 63G, Chapter 3, Utah Administrative Rulemaking
86 Act, for procurement, [~~which~~] that enable the administration to efficiently fulfill [its] the
87 administration's responsibilities under the law.

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

90 (ii) The following fees of the administration are subject to ~~[the requirements of]~~

91 Section 63J-1-504:

92 (A) application[;];

93 (B) assignment[;];

94 (C) amendment[;];

95 (D) affidavit for lost documents[;];

96 (E) name change[;];

97 (F) reinstatement[;];

98 (G) grazing nonuse[;];

99 (H) extension of time[;];

100 (I) partial conveyance[;];

101 (J) patent reissue[;];

102 (K) collateral assignment[;];

103 (L) electronic payment[;]; and

104 (M) processing.

105 (g) (i) Notwithstanding Subsection 63J-1-206(2)(c), the administration may transfer
106 ~~[funds]~~ money between ~~[its]~~ the administration's line items.

107 (ii) Before transferring appropriated ~~[funds]~~ money between line items, the
108 administration shall submit a proposal to the board for ~~[its]~~ the board's approval.

109 (iii) If the board gives approval to a proposal to transfer appropriated ~~[funds]~~ money
110 between line items, the administration shall submit the proposal to the Legislative Executive
111 Appropriations Committee for ~~[its]~~ the Legislative Executive Appropriations Committee's
112 review and recommendations.

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

114 (A) that the administration transfer the appropriated ~~[funds]~~ money between line items;

115 (B) that the administration not transfer the appropriated ~~[funds]~~ money between line
116 items; or

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

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

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

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

127 (ii) The director may make rules in accordance with Title 63G, Chapter 3, Utah
128 Administrative Rulemaking Act, to implement policies provided by the board regarding Native
129 American remains.

130 (6) In connection with joint ventures and other transactions involving trust lands and
131 minerals approved under Sections 53C-1-303 and 53C-2-401, the administration, with board
132 approval, may become a member of a limited liability company under Title 48, Chapter 3a,
133 Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section
134 48-3a-1405 and is considered a person under Section 48-3a-102.

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

137 (8) (a) Notwithstanding Subsection (3), Subsection 52-4-204(2) or 52-4-205(1), and in
138 addition to the reasons to close a meeting under Section 52-4-205, the board may hold a closed
139 meeting if two-thirds of the members present when a quorum is present vote to close the
140 meeting for the purpose of:

141 (i) conducting a strategy session to discuss market conditions relevant to the ~~Ŝ~~→ **[timing of**
142 **monetizing] sale of particular** ~~←Ŝ~~ trust assets ~~Ŝ~~→ **[or making capital expenditures to increase the**
142a **value of trust assets]** if the terms of the sale of any trust assets are publicly disclosed before the
142b board approves the sale and a public discussion would:

142c **(A) disclose the appraisal or estimated value of the trust assets under consideration; or**

142d **(B) prevent the board from completing a contemplated transaction concerning the trust assets**
on

142e **the best possible terms** ~~←Ŝ~~ ; or

143 (ii) ~~Ŝ~~→ **[evaluating] conducting a strategy session to evaluate** ~~←Ŝ~~ the terms of a joint
143a venture or other business arrangement authorized

144 under Subsection 53C-1-303(3)(e) ~~Ŝ~~→ **if the terms of the joint venture or other business**

144a **arrangement are publicly disclosed before the board approves the transaction and a public**

144b **discussion of the transaction would:**⊕

- 144c **⊗(A) disclose the appraisal or estimated value of the trust assets under consideration; or**
- 144d **(B) prevent the board from completing the transaction concerning the joint venture or other**
- 144e **business arrangement on the best possible terms ←Ŝ .**
- 145 **(b) The board shall comply with the procedural requirements for closing a meeting**
- 146 **under Title 52, Chapter 4, Open and Public Meetings Act.**