

Utah Code -- Title 53C -- School and Institutional Trust Lands Management Act

53C-1-101. Title.

This title is known as the "School and Institutional Trust Lands Management Act."

53C-1-102. Purpose.

(1) (a) The purpose of this title is to establish an administration and board to manage lands that Congress granted to the state for the support of common schools and other beneficiary institutions, under the Utah Enabling Act.

(b) This grant was expressly accepted in the Utah Constitution, thereby creating a compact between the federal and state governments which imposes upon the state a perpetual trust obligation to which standard trust principles are applied.

(c) Title to these trust lands is vested in the state as trustee to be administered for the financial support of the trust beneficiaries.

(2) (a) The trust principles referred to in Subsection (1) impose fiduciary duties upon the state, including a duty of undivided loyalty to, and a strict requirement to administer the trust corpus for the exclusive benefit of, the trust beneficiaries.

(b) As trustee, the state must manage the lands and revenues generated from the lands in the most prudent and profitable manner possible, and not for any purpose inconsistent with the best interests of the trust beneficiaries.

(c) The trustee must be concerned with both income for the current beneficiaries and the preservation of trust assets for future beneficiaries, which requires a balancing of short and long-term interests so that long-term benefits are not lost in an effort to maximize short-term gains.

(d) The beneficiaries do not include other governmental institutions or agencies, the public at large, or the general welfare of this state.

(3) This title shall be liberally construed to enable the board of trustees, the director, and the administration to faithfully fulfill the state's obligations to the trust beneficiaries.

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) "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.

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

(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 Sections **51-7a-201** and **51-7a-202**.

(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.

(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**(6) and (7), 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 Division of Administrative Rules and notified interested parties as provided in Subsection **63G-3-301(9)**.

(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, 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 6, 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) The board and director shall review the exceptions under this Subsection (3) and make recommendations for any modification, if required, which the Legislature would be asked to consider during its annual general session.

(ii) The board and director may include in their recommendations any other proposed exceptions from the usual executive and legislative controls the board and director consider necessary to accomplish the purpose of this title.

(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.

(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 for the development of trust lands and minerals approved by the board under Sections **53C-1-303** and **53C-2-401**, the administration may become a member of a limited liability company under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, and is considered a person under Section **48-2c-102**.

53C-1-202. Board of trustees membership -- Nomination list -- Qualifications -- Terms -- Replacement -- Chair -- Quorum.

(1) There is established the School and Institutional Trust Lands Board of Trustees.

(2) The board shall consist of seven members appointed on a nonpartisan basis by the governor with the consent of the Senate for nonconsecutive six-year terms.

(3) (a) Of the initial appointments to the board, the governor shall appoint one member to serve a six-year term, one member to serve a five-year term, one member to serve a four-year term, one member to serve a three-year term, one member to serve a two-year term, and one member to serve a one-year term.

(b) All subsequent appointments shall be for a term of six years, except if a vacancy occurs, the governor shall appoint a replacement, following the procedures set forth in Subsections (2), (4), (5), and (6), to fill the unexpired term.

(c) Any member of the board who has served less than six years upon the expiration of that member's term is eligible for a consecutive reappointment.

(d) Neither the term provision in Subsection (2) nor Subsection (3) applies to an appointment made under Subsection (5).

(4) (a) The governor shall select six of the seven appointees to the board from a nomination list of at least two candidates for each position or vacancy submitted pursuant to Section **53C-1-203**.

(b) The governor may request an additional nomination list of at least two candidates from the nominating committee if the initial list of candidates for a given position is unacceptable.

(c) (i) If the governor fails to select an appointee within 60 days after receipt of the initial list or within 60 days after the receipt of an additional list, the nominating committee shall make an interim appointment by majority vote.

(ii) The interim appointee shall serve until the matter is resolved by the committee and the governor or until replaced pursuant to this chapter.

(5) (a) The governor may appoint one member without requiring a nomination list.

(b) The member appointed under Subsection (5)(a) serves at the pleasure of the governor.

(6) (a) Each board candidate shall possess outstanding professional qualifications

pertinent to the purposes and activities of the trust.

(b) The board shall represent the following areas of expertise:

- (i) nonrenewable resource management or development;
- (ii) renewable resource management or development; and
- (iii) real estate.

(c) Other qualifications which are pertinent for membership to the board are expertise in any of the following areas:

- (i) business;
- (ii) investment banking;
- (iii) finance;
- (iv) trust administration;
- (v) asset management; and
- (vi) the practice of law in any of the areas referred to in Subsections (6)(b) and (6)(c)(i) through (v).

(7) The board of trustees shall select a chair from its membership.

(8) Before assuming a position on the board, each member shall take an oath of office.

(9) Four members of the board constitute a quorum for the transaction of business.

(10) The governor or five board members may, for cause, remove a member of the board.

(11) An aggrieved party to a final action by the board may obtain judicial review of that action under Sections **63G-4-402** and **63G-4-403**.

To view additional sections of the code involving trust lands and the administration of the lands, go to <http://le.utah.gov/~code/TITLE53C/53C01.htm> .

Last updated July 2008