

1 **TRUST LANDS AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: V. Lowry Snow**

5 Senate Sponsor: Margaret Dayton

7 **LONG TITLE**

8 **General Description:**

9 This bill deals with school and institutional trusts lands.

10 **Highlighted Provisions:**

11 This bill:

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

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

18 ▶ modifies the procedure for the sale of trust lands; and

19 ▶ makes technical changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill provides a special effective date.

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **53C-1-201**, as last amended by Laws of Utah 2016, Chapter 193

27 **53C-2-202**, as enacted by Laws of Utah 1994, Chapter 294

28 **53C-4-102**, as last amended by Laws of Utah 2011, Chapter 247

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

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

32 **53C-1-201. Creation of administration -- Purpose -- Director -- Participation in**
33 **Risk Management Fund.**

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

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

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

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

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

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

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

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

53 (c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah
54 Administrative Rulemaking Act, except that the administration is not subject to Subsections
55 **63G-3-301(5)**, (6)₂, and (7) and Section **63G-3-601**, and the director, with the board's approval,
56 may establish a procedure for the expedited approval of rules, based on written findings by the
57 director showing:

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

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

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

92 (ii) The following fees of the administration are subject to the requirements of Section
93 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change,
94 reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral
95 assignment, electronic payment, and processing.

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

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

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

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

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

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

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

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

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

111 (b) The board shall provide policies for the ownership and control of Native American
112 remains that are discovered or excavated on school and institutional trust lands in consultation
113 with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4,

114 Native American Grave Protection and Repatriation Act. The director may make rules in
115 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement
116 policies provided by the board regarding Native American remains.

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

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

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

125 **53C-2-202. Endangered and threatened plant species.**

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

130 Section 3. Section 53C-4-102 is amended to read:

131 **53C-4-102. Sale of trust lands -- Fair market value -- Determination of sale --**
132 **Advertising proposed sales -- Sale procedures -- Defaults.**

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

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

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

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

141 (4) (a) Any tract of trust land may be subdivided and sold, leased, or exchanged in

142 accordance with a plan, contract, or other action designating the land to be subdivided that is
143 approved by the director.

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

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

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

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

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

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

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

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

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

170 Section 4. **Effective date.**

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