1	UTAH NAVAJO ROYALTIES AMENDMENTS
2	2015 GENERAL SESSION
3	STATE OF UTAH
4	Chief Sponsor: Kevin T. Van Tassell
5	House Sponsor:
6 7	LONG TITLE
8	General Description:
9	This bill modifies provisions related to public funds and accounts to provide for a
10	Navajo Trust Fund to replace the Utah Navajo Royalties Holding Fund.
11	Highlighted Provisions:
12	This bill:
13	defines terms;
14	 creates the Navajo Trust Fund;
15	• outlines the duties of the Division of Finance, state treasurer, and state auditor with
16	regard to the fund;
17	provides for the board of trustees of the fund;
18	outlines powers and duties of the board of trustees;
19	 provides for the appointment of a trust administrator and, if necessary, the creation
20	of the Office of Trust Administrator;
21	outlines powers and duties of the trust administrator;
22	requires the attorney general to act as legal counsel to the board;
23	provides for consultation with state personnel;
24	addresses expenditures from the fund;
25	creates the Dineh Committee and provides for its duties;
26	 repeals provisions related to the Utah Navajo Royalties Holding Fund; and
27	makes technical changes.



28	Money Appropriated in this Bill:
29	None
30	Other Special Clauses:
31	None
32	Utah Code Sections Affected:
33	ENACTS:
34	51-10-101 , Utah Code Annotated 1953
35	51-10-102 , Utah Code Annotated 1953
36	51-10-201 , Utah Code Annotated 1953
37	51-10-202 , Utah Code Annotated 1953
38	51-10-203 , Utah Code Annotated 1953
39	51-10-204 , Utah Code Annotated 1953
40	51-10-205 , Utah Code Annotated 1953
41	51-10-206 , Utah Code Annotated 1953
42	REPEALS:
43	51-9-501, as enacted by Laws of Utah 2008, Chapter 202
44	51-9-502, as enacted by Laws of Utah 2008, Chapter 202
45	51-9-503, as enacted by Laws of Utah 2008, Chapter 202
46 47	51-9-504, as last amended by Laws of Utah 2014, Chapter 71
48	Be it enacted by the Legislature of the state of Utah:
49	Section 1. Section 51-10-101 is enacted to read:
50	CHAPTER 10. NAVAJO TRUST FUND ACT
51	Part 1. General Provisions
52	<u>51-10-101.</u> Title.
53	This chapter is known as the "Navajo Trust Fund Act."
54	Section 2. Section 51-10-102 is enacted to read:
55	51-10-102. Definitions.
56	As used in this chapter:
57	(1) "Administrative expenditure" means:
58	(a) an expenditure for professional services;

59	(b) per diem and travel expenses for the board and the Dineh Committee; and
60	(c) expense reimbursements, salaries, and benefits for the trust administrator and the
61	trust administrator's staff.
62	(2) "Blue Mountain Dine" means the off-reservation Navajo community organization
63	known as the Blue Mountain Dine'.
64	(3) "Board" means the board of trustees created in Section 51-10-202.
65	(4) "Business enterprise" means a sole proprietorship, partnership, corporation, limited
66	liability company, or other private entity organized to provide goods or services for a profit.
67	(5) "Dineh Committee" means the committee created in Section 51-10-206.
68	(6) "Fund" means the Navajo Trust Fund created in Section 51-10-201.
69	(7) "Income" means the revenues from investments made by the state treasurer of the
70	fund principal.
71	(8) "Navajos" means San Juan County, Utah, Navajos.
72	(9) "Office of Trust Administrator" means the office created in Section 51-10-203.
73	(10) "Principal" means:
74	(a) the balance of the fund as of May 12, 2015; and
75	(b) the revenue to the fund from whatever source except income.
76	(11) "Service provider" means any of the following that provides a good or service to
77	Navajos:
78	(a) a business enterprise;
79	(b) a private nonprofit organization; or
80	(c) a government entity.
81	(12) "Trust administrator" means the professional trust administrator appointed as
82	provided in Subsection 51-10-202(2).
83	(13) "Utah Navajo Chapter" means the following chapters of the Navajo Nation:
84	(a) Aneth Chapter;
85	(b) Mexican Water Chapter;
86	(c) Navajo Mountain Chapter;
87	(d) Oljato Chapter;
88	(e) Dennehotso Chapter;
89	(f) Red Mesa Chapter; and

90	(g) Teec Nos Pos Chapter.
91	Section 3. Section 51-10-201 is enacted to read:
92	Part 2. Administration of Navajo Trust Fund
93	<u>51-10-201.</u> Fund created.
94	(1) There is created a private-purpose trust fund entitled the "Navajo Trust Fund."
95	(2) The fund consists of:
96	(a) revenue received by the state that represents the 37-1/2% of the net oil royalties
97	from the Aneth Extension of the Navajo Indian Reservation required by Pub. L. No. 72-403, 47
98	Stat. 141, to be paid to the state;
99	(b) money received by the trust administrator from a contract executed by:
100	(i) the trust administrator; or
101	(ii) the board;
102	(c) appropriations made to the fund by the Legislature, if any;
103	(d) income;
104	(e) money related to litigation, including settlement of litigation, related to the royalties
105	described in Subsection (2)(a);
106	(f) the balance of the Utah Navajo Royalties Holding Fund as of May 12, 2015, which
107	shall be transferred to the fund; and
108	(g) other revenue received from other sources.
109	(3) The trust administrator shall account for the receipt and expenditures of fund
110	money in accordance with Subsection 51-10-204(1)(m) and the policies and guidance of the
111	Division of Finance.
112	(4) (a) (i) The state treasurer shall invest the fund money with the primary goal of
113	providing for the stability, income, and growth of the principal.
114	(ii) Nothing in this section requires a specific outcome in investing.
115	(iii) The state treasurer may deduct any administrative costs incurred in managing fund
116	assets from earnings before distributing them.
117	(iv) (A) The state treasurer may employ professional asset managers to assist in the
118	investment of assets of the fund.
119	(B) The treasurer may only provide compensation to asset managers from earnings
120	generated by the fund's investments.

121	(v) The state treasurer shall invest and manage the fund assets as a prudent investor
122	would, by:
123	(A) considering the purposes, terms, distribution requirements, and other
124	circumstances of the fund; and
125	(B) exercising reasonable care, skill, and caution in order to meet the standard of care
126	of a prudent investor.
127	(vi) In determining whether or not the state treasurer has met the standard of care of a
128	prudent investor, the judge or finder of fact shall:
129	(A) consider the state treasurer's actions in light of the facts and circumstances existing
130	at the time of the investment decision or action, and not by hindsight; and
131	(B) evaluate the state treasurer's investment and management decisions respecting
132	individual assets not in isolation, but in the context of a fund portfolio as a whole as a part of
133	an overall investment strategy that has risk and return objectives reasonably suited to the fund.
134	(b) (i) The fund shall earn interest.
135	(ii) The state treasurer shall deposit the interest or other revenue earned from
136	investment of the fund into the fund.
137	(5) The state auditor shall:
138	(a) conduct an annual audit of the fund's finances, internal controls, and compliance
139	with statutes, rules, and policies in accordance with Title 67, Chapter 3, Auditor; and
140	(b) deliver a copy of the annual audit report to the:
141	(i) board;
142	(ii) trust administrator;
143	(iii) Dineh Committee;
144	(iv) Office of Legislative Research and General Counsel for presentation to the Native
145	American Legislative Liaison Committee, created in Section 36-22-1;
146	(v) governor's office;
147	(vi) Division of Indian Affairs;
148	(vii) Navajo Nation;
149	(viii) United States Bureau of Indian Affairs; and
150	(ix) United States Secretary of the Interior.
151	Section 4. Section 51-10-202 is enacted to read:

152	51-10-202. Board of trustees of the fund Trust administrator.
153	(1) (a) There is created a board of trustees of the fund composed of the following three
154	members:
155	(i) the state treasurer;
156	(ii) the director of the Division of Finance; and
157	(iii) the director of the Governor's Office of Management and Budget or the director's
158	designee.
159	(b) The state treasurer is chair of the board.
160	(c) Three members of the board is a quorum.
161	(d) A member may not receive compensation or benefits for the member's service, but
162	may receive per diem and travel expenses in accordance with:
163	(i) Section 63A-3-106;
164	(ii) Section 63A-3-107; and
165	(iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
166	<u>63A-3-107.</u>
167	(2) (a) The board shall:
168	(i) contract with a person to act as trust administrator in accordance with Title 63G,
169	Chapter 6a, Utah Procurement Code, and when not provided for by this chapter, define the trust
170	administrator's duties; or
171	(ii) if unable to find a qualified person under Subsection (2)(a)(i) to act as trust
172	administrator for a reasonable cost, hire a qualified person to act as trust administrator and,
173	when not provided for in this chapter, define the trust administrator's duties.
174	(b) If the board hires a trust administrator under Subsection (2)(a)(ii), the board may
175	hire or authorize the trust administrator to hire other persons necessary to assist the trust
176	administrator and the board to perform the duties required by this chapter.
177	(3) The board shall:
178	(a) on behalf of the state, act as trustee of the fund and exercise the state's fiduciary
179	responsibilities;
180	(b) meet at least once every other month;
181	(c) review and approve the policies, projections, rules, criteria, procedures, forms,
182	standards, and performance goals established by the trust administrator;

183	(d) review and approve the fund budget prepared by the trust administrator;
184	(e) review the progress reports from programs financed by the fund;
185	(f) review financial records of the fund, including fund receipts, expenditures, and
186	investments; and
187	(g) do any other thing necessary to perform the state's fiduciary obligations under the
188	<u>fund.</u>
189	(4) The attorney general shall:
190	(a) act as legal counsel and provide legal representation to the board; and
191	(b) attend or direct an attorney from the attorney general's office to attend each meeting
192	of the board.
193	(5) The board may consult with knowledgeable state personnel to advise the board on
194	policy and technical matters.
195	Section 5. Section 51-10-203 is enacted to read:
196	51-10-203. Office of Trust Administrator.
197	(1) If the board hires a trust administrator under Subsection 51-10-202(2)(a)(ii), there
198	is created an Office of Trust Administrator.
199	(2) The trust administrator shall administer the office.
200	Section 6. Section 51-10-204 is enacted to read:
201	51-10-204. Trust administrator duties.
202	(1) Under the direction of the board, the trust administrator shall:
203	(a) review the documents and decisions highlighting the history of the fund, including:
204	(i) the Nelson report, prepared as part of the Bigman v. Utah Navajo Development
205	Council, Inc. C77-0031;
206	(ii) the November 1991 performance audit of the fund by the legislative auditor
207	general;
208	(iii) Sakezzie v. Utah Indian Affairs Commission, 198 F. Supp. 218 (1961);
209	(iv) Sakezzie v. Utah Indian Affairs Commission, 215 F. Supp. 12 (1963);
210	(v) the September 8, 1977, consent decree, the stipulation dated November 29, 1984,
211	modifying the consent decree, and the court's memorandum opinion dated September 25, 1978,
212	in Bigman v. Utah Navajo Development Council, Inc. C77-0031; and
213	(vi) rulings related to Pelt v. Utah;

214	(b) review all potential sources of fund revenues;
215	(c) prepare annual projections of money that will be available for Navajo programs;
216	(d) identify the property owned by the fund;
217	(e) establish and maintain a record system and retention schedule to retain records
218	relating to the fund's property and operations, including:
219	(i) records related to the ethics and conflict policy developed under Subsection (2)(c);
220	(ii) requests for proposals and proposals received;
221	(iii) contracts awarded;
222	(iv) project progress and completion reports;
223	(v) invoices; and
224	(vi) purchasing records;
225	(f) review the existing and proposed programs financed by the fund;
226	(g) evaluate whether the programs described in Subsection (1)(f) are the most practical
227	and cost-efficient means to provide the desired benefit to Navajos;
228	(h) consult regularly with the administrators of the programs financed by the fund to
229	obtain progress reports on the programs;
230	(i) attend all meetings of:
231	(i) the Dineh Committee; and
232	(ii) the board;
233	(j) certify that the expenditures of the fund:
234	(i) comply with the state's fiduciary responsibilities as trustee of the fund; and
235	(ii) are consistent with this section;
236	(k) make an annual report:
237	(i) to the:
238	(A) board;
239	(B) governor; and
240	(C) Native American Legislative Liaison Committee, created in Section 36-22-1; and
241	(ii) that:
242	(A) identifies the source and amount of the revenue received by the fund;
243	(B) identifies the recipient, purpose, and amount of the expenditures from the fund;
244	(C) identifies specifically each of the fund's investments and the actual return and the

245	rate of return from each investment; and
246	(D) recommends any necessary statutory changes to improve administration of the fund
247	or to protect the state from liability as trustee;
248	(1) submit a written annual report to the:
249	(i) Division of Indian Affairs;
250	(ii) Navajo Nation;
251	(iii) United States Bureau of Indian Affairs; and
252	(iv) United States Secretary of the Interior;
253	(m) establish, in conjunction with the state treasurer, the state auditor, and the Division
254	of Finance, appropriate accounting practices for the fund receipts, expenditures, and
255	investments according to generally accepted accounting principles;
256	(n) provide summary records of fund receipts, expenditures, and investments to the
257	board and to the Dineh Committee at each of their meetings;
258	(o) pay administrative expenses from the fund;
259	(p) report monthly to the board about:
260	(i) the trust administrator's activities; and
261	(ii) the status of the fund; and
262	(q) call additional meetings of the Dineh Committee when necessary.
263	(2) In conjunction with the Dineh Committee and under the direction of the board, the
264	trust administrator shall:
265	(a) before the beginning of each fiscal year, establish a list of the needs of Navajos for
266	that year to be used for the annual budget;
267	(b) before the beginning of each fiscal year, develop and approve an annual budget for
268	the fund;
269	(c) develop an ethics and conflict of interest policy that emphasizes the need to avoid
270	even the appearance of conflict of interest or impropriety that is to apply to:
271	(i) the trust administrator;
272	(ii) the trust administrator's staff; and
273	(iii) the Dineh Committee;
274	(d) require the trust administrator, each of the trust administrator's staff, and each
275	member of the Dineh Committee to sign and keep on file written documentation that

276	acknowledges:
277	(i) their receipt of the ethics and conflict of interest policy described in Subsection
278	(2)(c); and
279	(ii) their willingness to abide by the ethics and conflict of interest policy described in
280	Subsection (2)(c); and
281	(e) make expenditures from the fund "for the health, education, and general welfare of
282	the Navajo Indians residing in San Juan County" as required by:
283	(i) Pub. L. No. 72-403, 47 Stat. 1418 (1933);
284	(ii) Pub. L. No. 90-306, 82 Stat. 121 (1968); and
285	(iii) this chapter.
286	(3) The trust administrator, under direction of the board, may:
287	(a) contract with public and private entities; and
288	(b) unless prohibited by law or this chapter, acquire and hold money and other property
289	received in the administration of the fund.
290	Section 7. Section 51-10-205 is enacted to read:
291	51-10-205. Expenditures from the fund.
292	(1) (a) Under the direction of the board, the trust administrator may make expenditures
293	from the fund in accordance with Subsection 51-10-204(2)(e):
294	(b) The board may enter into a cost sharing agreement with one or more governmental
295	entities if the cost sharing agreement is recommended by at least five of the Utah Navajo
296	Chapters.
297	(2) (a) Before making any expenditures from the fund to a service provider, the trust
298	administrator shall:
299	(i) comply with Title 63G, Chapter 6a, Utah Procurement Code; and
300	(ii) review and approve the service provider's entire budget.
301	(b) The trust administrator may require that a service provider modify its budget or
302	meet other conditions precedent established by the trust administrator before the service
303	provider may receive expenditures from the fund.
304	(3) The trust administrator shall make an expenditure from the fund that is not an
305	administrative expenditure by:
306	(a) preparing a written document that:

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307	(i) defines specifically how the expenditure from the fund may be used;
308	(ii) establishes any conditions precedent to use of the expenditure; and
309	(iii) requires the recipient of fund money to provide the trust administrator with
310	progress reports detailing how the money has been expended; and
311	(b) obtaining the signature of the recipient on that document before releasing any
312	money from the fund.
313	(4) The trust administrator shall:
314	(a) make rules in accordance with Subsection (6) that:
315	(i) establish policies and criteria for expenditure of fund money; and
316	(ii) establish performance evaluation criteria with which to evaluate the success of
317	expenditures from the fund after they are made;
318	(b) develop procedures, forms, and standards for persons seeking distribution of fund
319	money that implement the policies and criteria established by rule;
320	(c) evaluate the requests for expenditures of fund money against:
321	(i) the policies and criteria established by rule; and
322	(ii) the requestor's success in meeting performance evaluation criteria and goals in any
323	prior receipt of fund money;
324	(d) develop performance goals for each fund expenditure that implement the
325	performance evaluation criteria established in rule; and
326	(e) monitor and evaluate each fund expenditure based upon the performance goals and
327	performance evaluation criteria created under this Subsection (4).
328	(5) The trust administrator may expend fund money for per diem and expenses incurred
329	by the Dineh Committee in performance of official duties.
330	(6) The trust administrator shall make a rule described in Subsection (4)(a):
331	(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
332	(b) with the input and recommendation of the Dineh Committee; and
333	(c) with the approval of the board.
334	Section 8. Section 51-10-206 is enacted to read:
335	51-10-206. Dineh Committee.
336	(1) There is created the Dineh Committee.
337	(2) (a) The governor, with the consent of the Senate, shall appoint nine members to the

338	Dineh Committee.
339	(b) In making an appointment under Subsection (2)(a), the governor shall ensure that
340	the Dineh Committee includes:
341	(i) two registered members of the Aneth Chapter of the Navajo Nation who reside in
342	San Juan County, Utah;
343	(ii) one registered member of the Blue Mountain Dine' who resides in San Juan
344	County, Utah;
345	(iii) one registered member of the Mexican Water Chapter of the Navajo Nation who
346	resides in San Juan County, Utah;
347	(iv) one registered member of the Navajo Mountain Chapter of the Navajo Nation who
348	resides in San Juan County, Utah;
349	(v) subject to Subsection (4), two members who reside in San Juan County, Utah, one
350	of whom is a registered member of the Oljato Chapter of the Navajo Nation, and one of whom
351	is a registered member of either the Oljato Chapter or the Dennehotso Chapter of the Navajo
352	Nation;
353	(vi) one registered member of the Red Mesa Chapter of the Navajo Nation who resides
354	in San Juan County, Utah; and
355	(vii) one registered member of the Teec Nos Pos Chapter of the Navajo Nation who
356	resides in San Juan County, Utah.
357	(3) (a) (i) Each chapter of the Utah Navajo Chapter, except the Aneth, Oljato, and
358	Dennehotso chapters, shall submit to the governor the names of three nominees to the Dineh
359	Committee chosen by the chapter.
360	(ii) The governor shall select one of the three persons whose names are submitted
361	under Subsection (3)(a)(i) as that chapter's representative on the Dineh Committee.
362	(b) (i) The Blue Mountain Dine' shall submit to the governor the names of three
363	nominees to the Dineh Committee.
364	(ii) The governor shall select one of the three persons whose names are submitted
365	under Subsection (3)(b)(i) as the Blue Mountain Dine' representative on the Dineh Committee.
366	(c) (i) The Aneth Chapter shall submit to the governor the names of six nominees to
367	the Dineh Committee chosen by the chapter.
368	(ii) The governor shall select two of the six persons whose names are submitted under

309	Subsection (3)(c)(1) to be the Aneth Chapter's representatives on the Dinen Committee.
370	(d) (i) The Oljato Chapter shall submit to the governor the names of six nominees to
371	the Dineh Committee chosen by the chapter.
372	(ii) One of the six names submitted under Subsection (3)(d)(i) may be a registered
373	member of the Dennehotso Chapter.
374	(iii) The governor shall select two of the six persons whose names are submitted under
375	Subsection (3)(d)(i) to be the representatives on the Dineh Committee of the Oljato and
376	Dennehotso chapters.
377	(e) Before submitting a name to the governor, the Utah Navajo Chapter and the Blue
378	Mountain Dine' shall ensure that the individual's whose name is submitted:
379	(i) is an enrolled member of the Navajo Nation;
380	(ii) resides in San Juan County, Utah;
381	(iii) is 21 years of age or older;
382	(iv) is not an officer of the chapter;
383	(v) has not been convicted of a felony; and
384	(vi) is not currently, or who within the last 12 months has not been, an officer, director,
385	employee, or contractor of a service provider that solicits, accepts, or receives a benefit from an
386	expenditure of:
387	(A) the Division of Indian Affairs; or
388	(B) the fund.
389	(4) If both members appointed under Subsection (2)(b)(vi) are registered members of
390	the Oljato Chapter, the two members shall attend Dennehotso Chapter meetings as practicable.
391	(5) (a) Except as provided in Subsection (5)(b) and other than the amount authorized
392	by this section for Dineh Committee member expenses, a person appointed to the Dineh
393	Committee may not solicit, accept, or receive any benefit from an expenditure of:
394	(i) the Division of Indian Affairs;
395	(ii) the fund; or
396	(iii) the Division of Indian Affairs or fund as an officer, director, employee, or
397	contractor of a service provider that solicits, accepts, or receives a benefit from the expenditure
398	<u>of:</u>
399	(A) the Division of Indian Affairs; or

400	(B) the fund.
401	(b) A member of the Dineh Committee may receive a benefit from an expenditure of
402	the fund if:
403	(i) when the benefit is discussed by the Dineh Committee:
404	(A) the member discloses that the member may receive the benefit;
405	(B) the member physically leaves the room in which the Dineh Committee is
406	discussing the benefit; and
407	(C) the Dineh Committee approves the member receiving the benefit by a unanimous
408	vote of the members present at the meeting discussing the benefit;
409	(ii) a Utah Navajo Chapter requests that the benefit be received by the member;
410	(iii) the member is in compliance with the ethics and conflict of interest policy required
411	under Subsection 51-10-204(2)(c);
412	(iv) (A) the expenditure from the fund is made in accordance with this chapter; and
413	(B) the benefit is no greater than the benefit available to members of the Navajo Nation
414	residing in San Juan County, Utah; and
415	(v) the member is not receiving the benefit as an officer, director, employee, or
416	contractor of a service provider.
417	(6) (a) (i) Except as required in Subsection (6)(a)(ii), as terms of current committee
418	members expire, the governor shall appoint each new member or reappointed member to a
419	four-year term.
420	(ii) The governor shall, at the time of appointment or reappointment, adjust the length
421	of terms to ensure that the terms of committee members are staggered so that approximately
422	half of the Dineh Committee is appointed every two years.
423	(b) Except as provided in Subsection (6)(c), a committee member shall serve until the
424	committee member's successor is appointed and qualified.
425	(c) If a committee member is absent from three consecutive committee meetings, or if
426	the committee member violates the ethical or conflict of interest policies established by statute
427	or the Dineh Committee:
428	(i) the committee member's appointment is terminated;
429	(ii) the position is vacant; and
430	(iii) the governor shall appoint a replacement.

431	(d) When a vacancy occurs in the membership for any reason, the governor shall
432	appoint a replacement for the unexpired term according to the procedures of this section.
433	(7) (a) The committee members shall select a chair and vice chair from committee
434	membership each two years subsequent to the appointment of new committee members.
435	(b) Five members of the Dineh Committee is a quorum for the transaction of business.
436	(c) The Dineh Committee shall:
437	(i) comply with Title 52, Chapter 4, Open and Public Meetings Act;
438	(ii) ensure that its meetings are held at or near:
439	(A) a chapter house or meeting hall of a Utah Navajo Chapter; or
440	(B) other places in Utah that the Dineh Committee considers practical and appropriate;
441	<u>and</u>
442	(iii) ensure that its meetings are public hearings at which a resident of San Juan
443	County, Utah, may appear and speak.
444	(8) A committee member may not receive compensation or benefits for the committee
445	member's service, but may receive per diem and travel expenses in accordance with:
446	(a) Section 63A-3-106;
447	(b) Section 63A-3-107; and
448	(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
449	<u>63A-3-107.</u>
450	(9) The trust administrator shall staff the Dineh Committee.
451	(10) The Dineh Committee shall advise the trust administrator about the expenditure of
452	fund money.
453	Section 9. Repealer.
454	This bill repeals:
455	Section 51-9-501, Title.
456	Section 51-9-502, Definitions.
457	Section 51-9-503, Purpose statement.
458	Section 51-9-504, Utah Navajo royalties and related issues.

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