

1 **SCHOOL TRUST LANDS MODIFICATIONS**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Melvin R. Brown**

5 AN ACT RELATING TO SCHOOL AND INSTITUTIONAL TRUST LANDS; PROVIDING
6 THAT NO MORE THAN 80% OF THE PERMANENT LAND GRANT TRUST FUND ASSETS
7 MAY BE INVESTED IN EQUITY SECURITIES; EXPANDING THE SCOPE OF THE EQUITY
8 SECURITIES; MODIFYING THE SELECTION PROCESS FOR THE SCHOOL AND
9 INSTITUTIONAL TRUST LANDS BOARD OF TRUSTEES NOMINATING COMMITTEE;
10 PROVIDING FOR AN AUDIT COMMITTEE TO OBTAIN FINANCIAL AUDITS OF THE
11 TRUST LANDS ADMINISTRATION AND DIRECT PERIODIC PERFORMANCE AUDITS;
12 MODIFYING PROVISIONS RELATED TO LEGAL REPRESENTATION FOR THE
13 ADMINISTRATION; AND PROVIDING THAT THE DIRECTOR OF THE
14 ADMINISTRATION SHALL EFFICIENTLY MANAGE ALL RANGE RESOURCES ON
15 TRUST LANDS CONSISTENT WITH THE DIRECTOR'S FIDUCIARY DUTIES TO THE
16 BENEFICIARIES.

17 This act affects sections of Utah Code Annotated 1953 as follows:

18 AMENDS:

19 **51-7-12**, as last amended by Chapter 270, Laws of Utah 1999

20 **53C-1-201**, as last amended by Chapter 219, Laws of Utah 1998

21 **53C-1-203**, as last amended by Chapter 243, Laws of Utah 1996

22 **53C-1-204**, as last amended by Chapter 103, Laws of Utah 1996

23 **53C-1-305**, as enacted by Chapter 294, Laws of Utah 1994

24 **53C-5-101**, as enacted by Chapter 294, Laws of Utah 1994

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

26 Section 1. Section **51-7-12** is amended to read:

27 **51-7-12. Deposit or investment of permanent land grant trust funds -- Authorized**

28 **deposits and investments -- Asset manager -- Investment Advisory Committee.**

29 (1) The principal of the permanent land grant trust funds established pursuant to the Utah
30 Enabling Act and the Utah Constitution shall be deposited or invested only in the following:

31 (a) any deposit or investment authorized by Section 51-7-11;

32 (b) no more than 80% of the total fund assets may be invested in equity securities,
33 including common and preferred stock issued by corporations listed on a major securities exchange
34 and venture capital and private equity investments through professional managers, in accordance
35 with the following criteria applied at the time of investment:

36 (i) the treasurer may not invest more than 5%, determined on a cost basis, of the total fund
37 assets in the securities of any one issuer;

38 (ii) the treasurer may not invest more than 25%, determined on a cost basis, of total fund
39 assets in a particular industry;

40 (iii) the treasurer may not invest more than 5%, determined on a cost basis, of the total
41 fund assets in securities of corporations that have been in continuous operation for less than three
42 years;

43 (iv) the fund may not hold in excess of 5% of the outstanding voting securities of any one
44 corporation; and

45 (v) at least 75% of the corporations in which investments are made under Subsection (1)(b)
46 must appear on the Standard and Poor's 500 Composite Stock Price Index;

47 (c) fixed-income securities, including bonds, notes, mortgage securities, zero coupon
48 securities and convertible securities issued by domestic corporations rated A or higher by Moody's
49 Investor's Service, Inc. or by Standard and Poor's Corporation in accordance with the following
50 criteria applied at the time of investment:

51 (i) the treasurer may not invest more than 5%, determined on a cost basis, of the total fund
52 assets in the securities of any one issuer;

53 (ii) the treasurer may not invest more than 25%, determined on a cost basis, of the total
54 fund assets in a particular industry;

55 (iii) the treasurer may not invest more than 5%, determined on a cost basis, of the total
56 fund assets in securities of corporations that have been in continuous operation for less than three
57 years; and

58 (iv) the dollar-weighted average maturity of fixed-income securities acquired under

59 Subsection (1)(c) may not exceed ten years;

60 (d) fixed-income securities issued by agencies of the United States and
61 government-sponsored organizations, including mortgage-backed pass-through certificates and
62 mortgage-backed bonds;

63 (e) shares of an open-end diversified management investment company established under
64 the Investment Companies Act of 1940; and

65 (f) shares of or deposits in a pooled-investment program.

66 (2) (a) No more than 65% of the total fund assets of any of these funds, on a cost basis,
67 may be invested in common or preferred stocks at any one time.

68 (b) At least 35% of the total assets of these funds shall be invested in fixed-income
69 securities authorized by Subsections (1)(a), (c), and (d).

70 (3) The state treasurer shall use appropriate investment strategies to protect the principal
71 of the funds administered under this section during periods of financial market volatility.

72 (4) (a) The state treasurer may employ professional asset managers to assist in the
73 investment of assets of the permanent trust funds.

74 (b) The treasurer may provide compensation to asset managers from earnings generated
75 by the funds' investments.

76 (5) This section applies only to permanent trust funds in which the principal is prudently
77 invested and held by the state in perpetuity.

78 (6) (a) There is established an advisory committee to give suggestions, advice, and
79 opinions to the state treasurer in regard to this section.

80 (b) The committee shall consist of the following:

81 (i) one member appointed by the president of the University of Utah;

82 (ii) one member appointed by the president of Utah State University;

83 (iii) one member appointed by the state superintendent of public instruction;

84 (iv) one member appointed by the president of the Utah Education Association;

85 (v) one member appointed by the president of the Utah Parent Teachers Association; and

86 (vi) one member appointed by the director of the Department of Human Services.

87 (c) (i) Except as required by Subsection (6)(c)(ii), as terms of current committee members
88 expire, the appointing authority shall appoint each new member or reappointed member to a
89 four-year term.

90 (ii) Notwithstanding the requirements of Subsection (6)(c)(i), the appointing authority
91 shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the
92 terms of committee members are staggered so that approximately half of the committee is
93 appointed every two years.

94 (d) When a vacancy occurs in the membership for any reason, the replacement shall be
95 appointed for the unexpired term.

96 (e) The committee shall meet at least annually and review investment reports prepared by
97 the state treasurer, including information on portfolio composition and investment performance.

98 (7) (a) (i) Members who are not government employees shall receive no compensation or
99 benefits for their services, but may receive per diem and expenses incurred in the performance of
100 the member's official duties at the rates established by the Division of Finance under Sections
101 63A-3-106 and 63A-3-107.

102 (ii) Members may decline to receive per diem and expenses for their service.

103 (b) (i) State government officer and employee members who do not receive salary, per
104 diem, or expenses from their agency for their service may receive per diem and expenses incurred
105 in the performance of their official duties from the committee at the rates established by the
106 Division of Finance under Sections 63A-3-106 and 63A-3-107.

107 (ii) A state government member who is a member because of their state government
108 position may not receive per diem or expenses for their service.

109 (iii) State government officer and employee members may decline to receive per diem and
110 expenses for their service.

111 (c) (i) Local government members who do not receive salary, per diem, or expenses from
112 the entity that they represent for their service may receive per diem and expenses incurred in the
113 performance of their official duties at the rates established by the Division of Finance under
114 Sections 63A-3-106 and 63A-3-107.

115 (ii) Local government members may decline to receive per diem and expenses for their
116 service.

117 Section 2. Section **53C-1-201** is amended to read:

118 **53C-1-201. Creation of administration -- Purpose -- Director.**

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

121 (b) The administration shall manage all school and institutional trust lands and assets
122 within the state, except as otherwise provided in Chapter 3 of this title and Section 51-7-12.

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

125 (3) (a) It is subject to the usual legislative and executive department controls except as
126 follows:

127 (i) (A) the director may make rules as approved by the board that allow the administration
128 to classify a business proposal submitted to the administration as protected under Section
129 63-2-304, for as long as is necessary to evaluate the proposals;

130 (B) the administration shall return the proposal to the party who submitted the proposal,
131 and incur no further duties under Title 63, Chapter 2, Government Records Access and
132 Management Act, if the administration determines not to proceed with the proposal;

133 (C) the administration shall classify the proposal pursuant to law if it decides to proceed
134 with the proposal; and

135 (D) Section 63-2-403 does not apply during the review period;

136 (ii) the director shall make rules in compliance with Title 63, Chapter 46a, Utah
137 Administrative Rulemaking Act, except that the director, with the board's approval, may establish
138 a procedure for the expedited approval of rules, based on written findings by the director showing:

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

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

142 (C) the reasons the normal procedures under Section 63-46a-4 cannot be met without
143 causing the loss of the specific opportunity;

144 (D) approval by at least five board members; and

145 (E) that the director has filed a copy of the rule and a rule analysis, stating the specific
146 reasons and justifications for its findings, with the Division of Administrative Rules and notified
147 interested parties as provided in Subsection 63-46a-4(7); and

148 (iii) the administration shall comply with Title 67, Chapter 19, Utah State Personnel
149 Management Act, except as follows:

150 (A) the board may approve, upon recommendation of the director, that exemption for
151 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable

152 the administration to efficiently fulfill its responsibilities under the law. The director shall consult
153 with the director of the Department of Human Resource Management prior to making such a
154 recommendation. The positions of director, deputy director, assistant director, legal counsel
155 appointed under Subsection 53C-1-305(2), administrative assistant, and public affairs officer are
156 exempt under Subsections 67-19-12(2) and 67-19-15(1);

157 (B) salary for exempted positions, except for the director, shall be set by the director, after
158 consultation with the director of the Department of Human Resource Management, within ranges
159 approved by the board. The board and director shall consider salaries for similar positions in
160 private enterprise and other public employment when setting salary ranges; and

161 (C) the board may create an annual incentive and bonus plan for the director and other
162 administration employees designated by the board, based upon the attainment of financial
163 performance goals and other measurable criteria defined and budgeted in advance by the board;
164 and

165 (iv) the administration shall comply with Title 63, Chapter 56, Utah Procurement Code,
166 except where the board approves, upon recommendation of the director, exemption [~~under Section~~
167 ~~63-56-3~~] from the Utah Procurement Code, and simultaneous adoption of policies for procurement,
168 which enable the administration to efficiently fulfill its responsibilities under the law.

169 (b) (i) The board and director shall review the exceptions under Subsection (3)(a) and
170 make recommendations for any modification, if required, which the Legislature would be asked
171 to consider during its annual General Session.

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

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

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

179 (b) The board shall provide policies for the ownership and control of Native American
180 remains that are discovered or excavated on school and institutional trust lands in consultation with
181 the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4, Native
182 American [~~Graves~~] Grave Protection and Repatriation Act.

183 (6) In connection with joint ventures for the development of trust lands and minerals
184 approved by the board under Subsection 53C-1-303(4)(c), the administration may become a
185 member of a limited liability company under Title 48, Chapter 2b, Utah Limited Liability
186 Company Act, and is considered a person under Subsection 48-2b-102(6) for such purposes.

187 Section 3. Section **53C-1-203** is amended to read:

188 **53C-1-203. Board of trustees nominating committee -- Composition --**
189 **Responsibilities -- Per diem and expenses.**

190 (1) There is established an 11 member board of trustees nominating committee.

191 (2) (a) The State Board of Education shall appoint five members to the nominating
192 committee from different geographical areas of the state.

193 (b) The governor shall appoint five members to the nominating committee as follows:

194 (i) one individual from a nomination list of at least two names of individuals
195 knowledgeable about institutional trust lands submitted by the [~~commissioner of higher education~~
196 ~~after consultation with institutional trust land beneficiaries, other than the public school trust land~~
197 ~~beneficiaries] University of Utah and Utah State University on an alternating basis every four
198 years;~~

199 (ii) one individual from a nomination list of at least two names submitted by the livestock
200 industry;

201 (iii) one individual from a nomination list of at least two names submitted by the Utah
202 Petroleum Association;

203 (iv) one individual from a nomination list of at least two names submitted by the Utah
204 Mining Association; and

205 (v) one individual from a nomination list of at least two names submitted by the executive
206 director of the Department of Natural Resources after consultation with statewide wildlife and
207 conservation organizations.

208 (c) The president of the Utah Association of Counties shall designate the chair of the
209 Public Lands Steering Committee, who must be an elected county commissioner or councilor, to
210 serve as the eleventh member of the nominating committee.

211 (3) (a) Except as required by Subsection (3)(b), each member shall serve a four-year term.

212 (b) Notwithstanding the requirements of Subsection (3)(a), the state board and the
213 governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure

214 that the terms of committee members are staggered so that approximately half of the committee
215 is appointed every two years.

216 (c) When a vacancy occurs in the membership for any reason, the replacement shall be
217 appointed for the unexpired term.

218 (4) The nominating committee shall select a chair from its membership by majority vote.

219 (5) (a) The nominating committee shall nominate at least two candidates for each position
220 or vacancy which occurs on the board of trustees except for the governor's appointee under
221 Subsection 53C-1-202(5).

222 (b) The nominations shall be by majority vote of the committee.

223 (6) (a) (i) Members who are not government employees shall receive no compensation or
224 benefits for their services, but may receive per diem and expenses incurred in the performance of
225 the member's official duties at the rates established by the Division of Finance under Sections
226 63A-3-106 and 63A-3-107.

227 (ii) Members may decline to receive per diem and expenses for their service.

228 (b) (i) State government officer and employee members who do not receive salary, per
229 diem, or expenses from their agency for their service may receive per diem and expenses incurred
230 in the performance of their official duties from the committee at the rates established by the
231 Division of Finance under Sections 63A-3-106 and 63A-3-107.

232 (ii) State government officer and employee members may decline to receive per diem and
233 expenses for their service.

234 (c) (i) Higher education members who do not receive salary, per diem, or expenses from
235 the entity that they represent for their service may receive per diem and expenses incurred in the
236 performance of their official duties from the committee at the rates established by the Division of
237 Finance under Sections 63A-3-106 and 63A-3-107.

238 (ii) Higher education members may decline to receive per diem and expenses for their
239 service.

240 Section 4. Section **53C-1-204** is amended to read:

241 **53C-1-204. Policies established by board -- Director.**

242 (1) (a) The board shall establish policies for the management of the School and
243 Institutional Trust Lands Administration.

244 (b) The policies shall:

245 (i) be consistent with the Utah Enabling Act, the Utah Constitution, and state law;
246 (ii) reflect undivided loyalty to the beneficiaries consistent with fiduciary duties;
247 (iii) require the return of not less than fair market value for the use, sale, or exchange of
248 school and institutional trust assets;

249 (iv) seek to optimize trust land revenues and increase the value of trust land holdings
250 consistent with the balancing of short and long-term interests, so that long-term benefits are not
251 lost in an effort to maximize short-term gains;

252 (v) maintain the integrity of the trust and prevent the misapplication of its lands and its
253 revenues; and

254 (vi) have regard for and seek General Fund appropriation compensation for the general
255 public's use of natural and cultural resources consistent with the duties of the administration as
256 trustee for the beneficiaries.

257 (2) The board shall ensure that the administration is managed according to law.

258 (3) The board shall establish due process procedures governing adjudicative proceedings
259 conducted by the administration.

260 (4) The board and the director shall recommend to the governor and the Legislature any
261 necessary or desirable changes in statutes relating to the trust or their trust responsibilities.

262 (5) Policies adopted by the Board of State Lands and Forestry prior to the effective date
263 of this act regarding school and institutional trust lands, shall remain in effect until amended or
264 repealed by the board.

265 [~~(6) Prior to the 1995 General Session, the board shall determine and make
266 recommendations to the governor and the Legislature regarding the feasibility of and necessity for
267 performance audits of the administration by a certified public accounting firm on a regular basis
268 of at least once every three years.]~~

269 (6) (a) The board shall establish and maintain an audit committee to obtain annual
270 financial audits of the administration, in consultation with the state auditor.

271 (b) The audit committee shall direct and supervise periodic performance audits of the
272 activities and programs of the administration in accordance with accepted private business
273 practices.

274 (7) The board shall develop policies for the long-term benefit of the trust utilizing the
275 broad discretion and power granted to it in this title.

276 (8) (a) (i) On at least three occasions during each calendar year and in cooperation with
277 the director, the board shall consult with an advisory committee consisting of five county
278 commissioners appointed by the Utah Association of Counties concerning the impact of trust land
279 management practices on rural economies.

280 (ii) The director shall notify the chair of the committee prior to any proposed board
281 actions. At the request of the committee and prior to taking the proposed action, the board shall
282 meet with the committee at the next scheduled board meeting.

283 (b) The association shall appoint the commissioners from five different counties based on
284 such factors as a county's total acreage of trust lands, the revenues generated from trust lands in
285 the county, and the potential for economic development of trust lands within the county.

286 (c) The advisory committee may request additional consultations it considers necessary
287 or appropriate, to be scheduled within a reasonable time after receipt of the request by the
288 administration.

289 (9) The board shall utilize the services of the attorney general as provided in Section
290 53C-1-305.

291 (10) The board may:

292 (a) (i) establish advisory committees to advise the board, director, or administration on
293 policies affecting the management of the trust, and pay the compensation and travel expenses in
294 accordance with rules adopted by the Division of Finance; and

295 (ii) after conferring with the director, hire consultants to advise the board, director, or
296 administration on issues affecting the management of the trust, and pay compensation to the
297 consultants from monies appropriated for that purpose;

298 (b) with the consent of the state risk manager, authorize the director to manage lands or
299 interests in lands held by any other public or private party, if:

300 (i) all management costs are compensated by the parties;

301 (ii) there is a commensurate return to the beneficiaries; and

302 (iii) the additional responsibilities do not detract from the administration's responsibilities
303 and its duty of undivided loyalty to the beneficiaries;

304 (c) issue subpoenas or authorize a hearing officer to issue subpoenas, to compel the
305 attendance of witnesses and the production of documents in adjudicative proceedings authorized
306 by law and administer oaths in the performance of official duties; and

307 (d) submit in writing to the director a request for responses, to be made within a reasonable
308 time, to questions concerning policies and practices affecting the management of the trust.

309 (11) Board members shall be given access to all administration records and personnel
310 consistent with law and as necessary to permit the board to accomplish its responsibilities to ensure
311 that the administration is in full compliance with applicable policies and law.

312 Section 5. Section **53C-1-305** is amended to read:

313 **53C-1-305. Attorney general to represent administration.**

314 (1) The attorney general shall:

315 (a) represent the board, director, or administration in any legal action relating to trust lands
316 except as otherwise provided in Subsection (3);

317 (b) review leases, contracts, and agreements submitted for review prior to execution; and

318 (c) undertake suits for the collection of royalties, rental, and other damages in the name
319 of the state.

320 (2) The attorney general may institute actions against any party to enforce this title or to
321 protect the interests of the trust beneficiaries.

322 (3) [The] In those instances where the interests of the trust beneficiaries conflict with those
323 of state officers or executive department agencies for which the attorney general acts as legal
324 advisor under Utah Constitution Article VII, Section 16, the board may, with the consent of the
325 attorney general [shall appoint inhouse and], employ independent counsel[, when required, with
326 the consent of the board] to represent and protect those interests.

327 Section 6. Section **53C-5-101** is amended to read:

328 **53C-5-101. Management of range resources.**

329 (1) The director is responsible for the efficient management of all range resources on lands
330 under the director's administration, consistent with his fiduciary duties to the beneficiaries.

331 (2) This management shall be based on sound resource management principles.

Legislative Review Note

as of 2-2-00 4:00 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel