

SCHOOL AND INSTITUTIONAL TRUST LANDS

AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions regarding the School Children's Trust Section under the State Board of Education.

Highlighted Provisions:

This bill:

▶ provides that the director of the School Children's Trust Section:

- shall take an oath of office as specified;
- shall serve for a term of six years;
- may serve multiple terms; and
- is exempt from the Utah State Personnel Management Act;

▶ amends the reasons for which the State Board of Education may remove the director of the School Children's Trust Section; and

▶ requires the School Children's Trust Section to annually:

- review each distribution recipient's compliance with applicable laws and rules;

and

- report any findings to the appropriate governing bodies.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **53A-16-101.6 (Superseded 07/01/17)**, as last amended by Laws of Utah 2016, Chapter

32 144

33 **53A-16-101.6 (Effective 07/01/17)**, as last amended by Laws of Utah 2016, Chapters

34 144 and 172

35 **53C-1-103**, as last amended by Laws of Utah 2012, Chapter 224



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

38 Section 1. Section **53A-16-101.6 (Superseded 07/01/17)** is amended to read:

39 **53A-16-101.6 (Superseded 07/01/17). Creation of School Children's Trust Section**

40 **-- Duties.**

41 (1) As used in this section:

42 (a) "School and institutional trust lands" is as defined in Section **53C-1-103**.

43 (b) "Section" means the School Children's Trust Section created in this section.

44 (c) "Trust" means:

45 (i) the School LAND Trust Program created in Section **53A-16-101.5**; and

46 (ii) the lands and funds associated with the trusts described in Subsection

47 **53C-1-103(7)**.

48 (2) There is established a School Children's Trust Section under the State Board of

49 Education.

50 (3) (a) The section shall have [a] an independent director[-] who shall:

51 (i) act in a fiduciary capacity to the trust beneficiaries in accordance with the principles

52 set forth in Section **53C-1-102**; and

53 (ii) take an oath of office before assuming the position of director as follows: "I

54 solemnly swear to carry out my duties as director of the School Children's Trust Section, with

55 undivided loyalty to the beneficiaries, to the best of my abilities and according to law."

56 (b) The director shall have professional qualifications and expertise in the areas

57 generating revenue to the trust, including:

58 (i) economics;

59 (ii) energy and mineral development;

60 (iii) finance;

61 (iv) investments;

62 (v) public education;

63 (vi) real estate;

64 (vii) renewable resources;

65 (viii) risk management; and

66 (ix) trust law.

67 (c) (i) The director shall:

68 (A) be appointed as provided in this Subsection (3)~~[-];~~ and

69 (B) except as provided in Subsection (3)(c)(ii), serve for a term of six years.

70 (ii) The six-year term of an individual who is the director on January 1, 2017, shall

71 expire on July 1, 2023, unless a vacancy occurs.

72 (iii) The director may serve more than one term.

73 (d) ~~[The]~~ When a vacancy for the position of director occurs, the School and

74 Institutional Trust Lands Board of Trustees nominating committee shall submit to the State

75 Board of Education the name of one person to serve as director.

76 (e) The State Board of Education may:

77 (i) appoint the person described in Subsection (3)(d) to serve as director; or

78 (ii) deny the appointment of the person described in Subsection (3)(d) to serve as

79 director.

80 (f) If the State Board of Education denies an appointment under this Subsection (3):

81 (i) the State Board of Education shall provide in writing one or more reasons for the

82 denial to the School and Institutional Trust Lands Board of Trustees nominating committee;

83 and

84 (ii) the School and Institutional Trust Lands Board of Trustees nominating committee

85 and the State Board of Education shall follow the procedures and requirements of this

86 Subsection (3) until the State Board of Education appoints a director.

87 (g) (i) The State Board of Education may remove the director only:

88 (A) by majority vote ~~[of a quorum]~~ of all the board members in an open and public

89 meeting after proper notice and the inclusion of the removal item on the agenda~~[-];~~ and

90 (B) for neglect of fiduciary duty, malfeasance, gross negligence, or incapacitation.

91 (ii) The termination of an individual under this Subsection (3)(g) is effective

92 immediately and creates a vacancy in the position of the director.

93 (h) The position of director is exempt from the career service provisions of Title 67,

94 Chapter 19, Utah State Personnel Management Act.

95 (4) The State Board of Education shall make rules regarding:

96 (a) regular reporting from the School Children's Trust Section director to the State
97 Board of Education, to allow the State Board of Education to fulfill its duties in representing
98 the trust beneficiaries; and

99 (b) the day-to-day reporting of the School Children's Trust Section director.

100 (5) (a) The director shall annually submit a proposed section budget to the State Board
101 of Education.

102 (b) After approving a section budget, the State Board of Education shall annually:

103 (i) receive input on the director's performance from the chair of the board and director

104 of:

105 (A) the School and Institutional Trust Lands Administration; and

106 (B) the School and Institutional Trust Fund Office;

107 (ii) establish the range and compensation of the director in line with comparable
108 positions in state government, the responsibilities of the position, and the qualifications
109 required in Subsection (3)(b);

110 (iii) report the director's compensation to the Public Education Appropriations
111 Subcommittee; and

112 (iv) propose the approved budget to the Legislature.

113 (6) The director is entitled to attend any presentation, discussion, meeting, or other
114 gathering concerning the trust, subject to:

115 (a) provisions of law prohibiting the director's attendance to preserve confidentiality; or

116 (b) other provisions of law that the director's attendance would violate.

117 (7) The section shall have a staff.

118 (8) The section shall protect current and future beneficiary rights and interests in the
119 trust consistent with the state's perpetual obligations under:

120 (a) the Utah Enabling Act;

- 121 (b) the Utah Constitution;
- 122 (c) state statute; and
- 123 (d) standard trust principles described in Section 53C-1-102.
- 124 (9) The section shall promote:
 - 125 (a) productive use of school and institutional trust lands for the financial support of the
 - 126 trust beneficiaries; and
 - 127 (b) the efficient and prudent investment of funds managed by the School and
 - 128 Institutional Trust Fund Office, created in Section 53D-1-201.
 - 129 (10) The section shall provide representation, advocacy, and input:
 - 130 (a) on behalf of current and future beneficiaries of the trust, school community
 - 131 councils, schools, and school districts;
 - 132 (b) on federal, state, and local land decisions and policies that affect the trust; and
 - 133 (c) to:
 - 134 (i) the School and Institutional Trust Lands Administration;
 - 135 (ii) the School and Institutional Trust Lands Board of Trustees;
 - 136 (iii) the Legislature;
 - 137 (iv) the School and Institutional Trust Fund Office, created in Section 53D-1-201;
 - 138 (v) the School and Institutional Trust Fund Board of Trustees, created in Section
 - 139 53D-1-301;
 - 140 (vi) the attorney general;
 - 141 (vii) the public; and
 - 142 (viii) other entities as determined by the section.
 - 143 (11) The section shall provide independent oversight on the prudent and profitable
 - 144 management of the trust and report annually to the State Board of Education and the
 - 145 Legislature.
 - 146 (12) The section shall provide information requested by a person or entity described in
 - 147 Subsections (10)(c)(i) through (vii).
 - 148 (13) (a) The section shall provide training to the entities described in Subsection
 - 149 (13)(b) on:
 - 150 (i) the School LAND Trust Program established in Section 53A-16-101.5; and
 - 151 (ii) (A) a school community council established pursuant to Section 53A-1a-108; or

152 (B) a charter trust land council established under Section 53A-16-101.5.

153 (b) The section shall provide the training to:

154 (i) a local school board or a charter school governing board;

155 (ii) a school district or a charter school; and

156 (iii) a school community council.

157 (14) The section shall annually:

158 (a) review each trust distribution recipient's compliance with applicable law, including

159 applicable rules adopted by the State Board of Education; and

160 (b) report findings to the State Board of Education and other appropriate governing

161 bodies, including:

162 (i) the School and Institutional Trust Lands Administration created in Section

163 53C-1-201 and the School and Institutional Trust Lands Board of Trustees established in

164 Section 53C-1-202;

165 (ii) the School and Institutional Trust Fund Office created in Section 53D-1-201 and

166 the School and Institutional Trust Fund Board of Trustees created in Section 53D-1-301; and

167 (iii) other designated representatives and organizations of trust beneficiaries of school

168 and institutional trust lands.

169 Section 2. Section 53A-16-101.6 (Effective 07/01/17) is amended to read:

170 **53A-16-101.6 (Effective 07/01/17). Creation of School Children's Trust Section --**

171 **Duties.**

172 (1) As used in this section:

173 (a) "School and institutional trust lands" is as defined in Section 53C-1-103.

174 (b) "Section" means the School Children's Trust Section created in this section.

175 (c) "Trust" means:

176 (i) the School LAND Trust Program created in Section 53A-16-101.5; and

177 (ii) the lands and funds associated with the trusts described in Subsection

178 53C-1-103(7).

179 (2) There is established a School Children's Trust Section under the State Board of

180 Education.

181 (3) (a) The section shall have [a] an independent director[-] who shall:

182 (i) act in a fiduciary capacity to the trust beneficiaries in accordance with the principles

183 set forth in Section [53C-1-102](#); and

184 (ii) take an oath of office before assuming the position of director as follows: "I
185 solemnly swear to carry out my duties as director of the School Children's Trust Section, with
186 undivided loyalty to the beneficiaries, to the best of my abilities and according to law."

187 (b) The director shall have professional qualifications and expertise in the areas
188 generating revenue to the trust, including:

189 (i) economics;

190 (ii) energy and mineral development;

191 (iii) finance;

192 (iv) investments;

193 (v) public education;

194 (vi) real estate;

195 (vii) renewable resources;

196 (viii) risk management; and

197 (ix) trust law.

198 (c) (i) The director shall:

199 (A) be appointed as provided in this Subsection (3)[-]; and

200 (B) except as provided in Subsection (3)(c)(ii), serve for a term of six years.

201 (ii) The six-year term of an individual who is the director on January 1, 2017, shall
202 expire on July 1, 2023, unless a vacancy occurs.

203 (iii) The director may serve more than one term.

204 (d) [~~The~~] When a vacancy for the position of director occurs, the School and
205 Institutional Trust Lands Board of Trustees nominating committee shall submit to the State
206 Board of Education the name of one person to serve as director.

207 (e) The State Board of Education may:

208 (i) appoint the person described in Subsection (3)(d) to serve as director; or

209 (ii) deny the appointment of the person described in Subsection (3)(d) to serve as
210 director.

211 (f) If the State Board of Education denies an appointment under this Subsection (3):

212 (i) the State Board of Education shall provide in writing one or more reasons for the
213 denial to the School and Institutional Trust Lands Board of Trustees nominating committee;

214 and

215 (ii) the School and Institutional Trust Lands Board of Trustees nominating committee
216 and the State Board of Education shall follow the procedures and requirements of this
217 Subsection (3) until the State Board of Education appoints a director.

218 (g) (i) The State Board of Education may remove the director only:

219 (A) by majority vote [~~of a quorum~~] of all the board members in an open and public
220 meeting after proper notice and the inclusion of the removal item on the agenda[-]; and

221 (B) for neglect of fiduciary duty, malfeasance, gross negligence, or incapacitation.

222 (ii) The termination of an individual under this Subsection (3)(g) is effective
223 immediately and creates a vacancy in the position of the director.

224 (h) The position of director is exempt from the career service provisions of Title 67,
225 Chapter 19, Utah State Personnel Management Act.

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227 (a) regular reporting from the School Children's Trust Section director to the State
228 Board of Education, to allow the State Board of Education to fulfill its duties in representing
229 the trust beneficiaries; and

230 (b) the day-to-day reporting of the School Children's Trust Section director.

231 (5) (a) The director shall annually submit a proposed section budget to the State Board
232 of Education.

233 (b) After approving a section budget, the State Board of Education shall annually:

234 (i) receive input on the director's performance from the chair of the board and director
235 of:

236 (A) the School and Institutional Trust Lands Administration; and

237 (B) the School and Institutional Trust Fund Office;

238 (ii) establish the range and compensation of the director in line with comparable
239 positions in state government, the responsibilities of the position, and the qualifications
240 required in Subsection (3)(b);

241 (iii) report the director's compensation to the Public Education Appropriations
242 Subcommittee; and

243 (iv) propose the approved budget to the Legislature.

244 (6) The director is entitled to attend any presentation, discussion, meeting, or other

245 gathering concerning the trust, subject to:

246 (a) provisions of law prohibiting the director's attendance to preserve confidentiality; or

247 (b) other provisions of law that the director's attendance would violate.

248 (7) The section shall have a staff.

249 (8) The section shall protect current and future beneficiary rights and interests in the
250 trust consistent with the state's perpetual obligations under:

251 (a) the Utah Enabling Act;

252 (b) the Utah Constitution;

253 (c) state statute; and

254 (d) standard trust principles described in Section 53C-1-102.

255 (9) The section shall promote:

256 (a) productive use of school and institutional trust lands for the financial support of the
257 trust beneficiaries; and

258 (b) the efficient and prudent investment of funds managed by the School and
259 Institutional Trust Fund Office, created in Section 53D-1-201.

260 (10) The section shall provide representation, advocacy, and input:

261 (a) on behalf of current and future beneficiaries of the trust, school community
262 councils, schools, and school districts;

263 (b) on federal, state, and local land decisions and policies that affect the trust; and

264 (c) to:

265 (i) the School and Institutional Trust Lands Administration;

266 (ii) the School and Institutional Trust Lands Board of Trustees;

267 (iii) the Legislature;

268 (iv) the School and Institutional Trust Fund Office, created in Section 53D-1-201;

269 (v) the School and Institutional Trust Fund Board of Trustees, created in Section
270 53D-1-301;

271 (vi) the attorney general;

272 (vii) the public; and

273 (viii) other entities as determined by the section.

274 (11) The section shall provide independent oversight on the prudent and profitable
275 management of the trust and report annually to the State Board of Education and the

276 Legislature.

277 (12) The section shall provide information requested by a person or entity described in
278 Subsections (10)(c)(i) through (vii).

279 (13) (a) The section shall provide training to the entities described in Subsection
280 (13)(b) on:

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- 282 (ii) (A) a school community council established pursuant to Section 53A-1a-108; or
- 283 (B) a charter trust land council established under Section 53A-16-101.5.

284 (b) The section shall provide the training to:

- 285 (i) a local school board or a charter school governing board;
- 286 (ii) a school district or a charter school; and
- 287 (iii) a school community council.

288 (14) The section shall annually:

289 (a) review each [school's] trust distribution recipient's compliance with applicable law,
290 including applicable rules adopted by the State Board of Education; and

291 (b) report findings to the State Board of Education[:] and other appropriate governing
292 bodies, including:

293 (i) the School and Institutional Trust Lands Administration created in Section
294 53C-1-201 and the School and Institutional Trust Lands Board of Trustees established in
295 Section 53C-1-202;

296 (ii) the School and Institutional Trust Fund Office created in Section 53D-1-201 and
297 the School and Institutional Trust Fund Board of Trustees created in Section 53D-1-301; and

298 (iii) other designated representatives and organizations of trust beneficiaries of school
299 and institutional trust lands.

300 Section 3. Section 53C-1-103 is amended to read:

301 **53C-1-103. Definitions.**

302 As used in this title:

303 (1) "Administration" means the School and Institutional Trust Lands Administration.

304 (2) "Board" or "board of trustees" means the School and Institutional Trust Lands
305 Board of Trustees.

306 (3) "Director" or "director of school and institutional trust lands" means the chief

307 executive officer of the School and Institutional Trust Lands Administration.

308 (4) "Mineral" includes oil, gas, and hydrocarbons.

309 (5) "Nominating committee" means the committee that nominates candidates for
310 positions and vacancies on the board.

311 (6) "Policies" means statements applying to the administration that broadly prescribe a
312 future course of action and guiding principles.

313 (7) "Primary beneficiary representative" means the State Board of Education acting
314 with undivided loyalty consistent with the fiduciary duties and principles set forth in Section
315 53C-1-102 for the financial support of and as representative on behalf of the following trusts:

316 (a) the trust established for common schools;

317 (b) the trust established for schools for the blind; and

318 (c) the trust established for schools for the deaf.

319 (8) "School and institutional trust lands" or "trust lands" means those properties
320 granted by the United States in the Utah Enabling Act to the state in trust, and other lands
321 transferred to the trust, which must be managed for the benefit of:

322 (a) the state's public education system; or

323 (b) the institutions of the state which are designated by the Utah Enabling Act as
324 beneficiaries of trust lands.

Legislative Review Note
Office of Legislative Research and General Counsel