

**RISK MANAGEMENT FOR INDEPENDENT ENTITIES**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**Committee Note:**

The Retirement and Independent Entities Interim Committee recommended this bill.

**General Description:**

This bill modifies the Independent Entities Code by amending requirements for a state independent entity to participate in coverage under the Risk Management Fund.

**Highlighted Provisions:**

This bill:

- ▶ modifies the list of state independent entities included in the definition of "independent entity" in the Independent Entities Code;
- ▶ provides that an independent entity is not eligible for coverage by the Division of Risk Management unless the entity's authorizing statute specifically authorizes coverage;
- ▶ modifies the authorizing statutes of certain independent entities to allow for participation in risk-management coverage;
- ▶ provides that the state risk manager may require participating independent entities to obtain additional insurance and comply with other loss-prevention measures for a commercial activity; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None



28 **Other Special Clauses:**

29 This bill provides an effective date.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **53C-1-201 (Effective 07/01/13)**, as last amended by Laws of Utah 2011, Chapter 353

33 **53C-1-201 (Effective 05/01/13) (Sup 07/01/13)**, as last amended by Laws of Utah

34 2012, Chapter 347

35 **63C-7-210 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347

36 **63E-1-102**, as last amended by Laws of Utah 2012, Chapters 212 and 369

37 **63E-2-107**, as enacted by Laws of Utah 2001, Chapter 201

38 **63H-4-108 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347

39 ENACTS:

40 **63E-1-304**, Utah Code Annotated 1953



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

43 Section 1. Section **53C-1-201 (Effective 07/01/13)** is amended to read:

44 **53C-1-201 (Effective 07/01/13). Creation of administration -- Purpose -- Director.**

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

47 (b) The administration shall manage all school and institutional trust lands and assets  
48 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation  
49 of Revenue from Trust Lands, and Sections 51-7a-201 and 51-7a-202.

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

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

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

57 (ii) The administration shall return the proposal to the party who submitted the  
58 proposal, and incur no further duties under Title 63G, Chapter 2, Government Records Access

59 and Management Act, if the administration determines not to proceed with the proposal.

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

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

63 (c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah  
64 Administrative Rulemaking Act, except that the administration is not subject to Subsections  
65 63G-3-301(6) and (7) and Section 63G-3-601, and the director, with the board's approval, may  
66 establish a procedure for the expedited approval of rules, based on written findings by the  
67 director showing:

68 (i) the changes in business opportunities affecting the assets of the trust;

69 (ii) the specific business opportunity arising out of those changes which may be lost  
70 without the rule or changes to the rule;

71 (iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without  
72 causing the loss of the specific opportunity;

73 (iv) approval by at least five board members; and

74 (v) that the director has filed a copy of the rule and a rule analysis, stating the specific  
75 reasons and justifications for its findings, with the Division of Administrative Rules and  
76 notified interested parties as provided in Subsection 63G-3-301(10).

77 (d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel  
78 Management Act, except as provided in this Subsection (3)(d).

79 (ii) The board may approve, upon recommendation of the director, that exemption for  
80 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable  
81 the administration to efficiently fulfill its responsibilities under the law. The director shall  
82 consult with the executive director of the Department of Human Resource Management prior  
83 to making such a recommendation.

84 (iii) The positions of director, deputy director, associate director, assistant director,  
85 legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs  
86 officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

87 (iv) Salaries for exempted positions, except for the director, shall be set by the director,  
88 after consultation with the executive director of the Department of Human Resource  
89 Management, within ranges approved by the board. The board and director shall consider

90 salaries for similar positions in private enterprise and other public employment when setting  
91 salary ranges.

92 (v) The board may create an annual incentive and bonus plan for the director and other  
93 administration employees designated by the board, based upon the attainment of financial  
94 performance goals and other measurable criteria defined and budgeted in advance by the board.

95 (e) The administration shall comply with Title 63G, Chapter 6a, Utah Procurement  
96 Code, except where the board approves, upon recommendation of the director, exemption from  
97 the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3,  
98 Utah Administrative Rulemaking Act, for procurement, which enable the administration to  
99 efficiently fulfill its responsibilities under the law.

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

102 (ii) The following fees of the administration are subject to the requirements of Section  
103 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change,  
104 reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral  
105 assignment, electronic payment, and processing.

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

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

110 (b) The board shall provide policies for the ownership and control of Native American  
111 remains that are discovered or excavated on school and institutional trust lands in consultation  
112 with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4,  
113 Native American Grave Protection and Repatriation Act. The director may make rules in  
114 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement  
115 policies provided by the board regarding Native American remains.

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

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

123 Section 2. Section **53C-1-201 (Effective 05/01/13) (Sup 07/01/13)** is amended to read:

124 **53C-1-201 (Effective 05/01/13) (Sup 07/01/13). Creation of administration --**

125 **Purpose -- Director.**

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

128 (b) The administration shall manage all school and institutional trust lands and assets  
129 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation  
130 of Revenue from Trust Lands, and Sections 51-7a-201 and 51-7a-202.

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

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

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

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

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

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

144 (c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah  
145 Administrative Rulemaking Act, except that the administration is not subject to Subsections  
146 63G-3-301(6) and (7) and Section 63G-3-601, and the director, with the board's approval, may  
147 establish a procedure for the expedited approval of rules, based on written findings by the  
148 director showing:

149 (i) the changes in business opportunities affecting the assets of the trust;

150 (ii) the specific business opportunity arising out of those changes which may be lost  
151 without the rule or changes to the rule;

152 (iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without  
153 causing the loss of the specific opportunity;

154 (iv) approval by at least five board members; and

155 (v) that the director has filed a copy of the rule and a rule analysis, stating the specific  
156 reasons and justifications for its findings, with the Division of Administrative Rules and  
157 notified interested parties as provided in Subsection 63G-3-301(10).

158 (d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel  
159 Management Act, except as provided in this Subsection (3)(d).

160 (ii) The board may approve, upon recommendation of the director, that exemption for  
161 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable  
162 the administration to efficiently fulfill its responsibilities under the law. The director shall  
163 consult with the executive director of the Department of Human Resource Management prior  
164 to making such a recommendation.

165 (iii) The positions of director, deputy director, associate director, assistant director,  
166 legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs  
167 officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

168 (iv) Salaries for exempted positions, except for the director, shall be set by the director,  
169 after consultation with the executive director of the Department of Human Resource  
170 Management, within ranges approved by the board. The board and director shall consider  
171 salaries for similar positions in private enterprise and other public employment when setting  
172 salary ranges.

173 (v) The board may create an annual incentive and bonus plan for the director and other  
174 administration employees designated by the board, based upon the attainment of financial  
175 performance goals and other measurable criteria defined and budgeted in advance by the board.

176 (e) The administration shall comply with Title 63G, Chapter 6a, Utah Procurement  
177 Code, except where the board approves, upon recommendation of the director, exemption from  
178 the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3,  
179 Utah Administrative Rulemaking Act, for procurement, which enable the administration to  
180 efficiently fulfill its responsibilities under the law.

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

183 (ii) The following fees of the administration are subject to the requirements of Section  
184 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change,  
185 reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral  
186 assignment, electronic payment, and processing.

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

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

191 (b) The board shall provide policies for the ownership and control of Native American  
192 remains that are discovered or excavated on school and institutional trust lands in consultation  
193 with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4,  
194 Native American Grave Protection and Repatriation Act. The director may make rules in  
195 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement  
196 policies provided by the board regarding Native American remains.

197 (6) In connection with joint ventures and other transactions involving trust lands and  
198 minerals approved under Sections 53C-1-303 and 53C-2-401, the administration, with board  
199 approval, may become a member of a limited liability company under Title 48, Chapter 2c,  
200 Utah Revised Limited Liability Company Act, and is considered a person under Section  
201 48-2c-102.

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

204 Section 3. Section **63C-7-210 (Effective 05/01/13)** is amended to read:

205 **63C-7-210 (Effective 05/01/13). Relation to certain acts.**

206 (1) The Utah Communications Agency Network is exempt from:

207 (a) Title 63J, Chapter 1, Budgetary Procedures Act;

208 (b) Title 63A, Utah Administrative Services Code, except as provided in Section  
209 63A-4-205.5;

210 (c) Title 63G, Chapter 6a, Utah Procurement Code;

211 (d) Title 63G, Chapter 4, Administrative Procedures Act; and

212 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

213 (2) The board shall adopt budgetary procedures, accounting, procurement, and

214 personnel policies substantially similar to those from which they have been exempted in  
215 Subsection (1).

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

218 Section 4. Section **63E-1-102** is amended to read:

219 **63E-1-102. Definitions.**

220 As used in this title:

221 (1) "Authorizing statute" means the statute creating an entity as an independent entity.

222 (2) "Committee" means the Retirement and Independent Entities Committee created  
223 ~~[in]~~ by Section 63E-1-201.

224 (3) "Independent corporation" means a corporation incorporated in accordance with  
225 Chapter 2, Independent Corporations Act.

226 (4) (a) "Independent entity" means an entity having a public purpose relating to the  
227 state or its citizens that is individually created by the state or is given by the state the right to  
228 exist and conduct its affairs as an:

229 (i) independent state agency; or

230 (ii) independent corporation.

231 (b) "Independent entity" includes the:

232 (i) Utah Dairy Commission created ~~[in Title 4, Chapter 22, Dairy Promotion Act]~~ by  
233 Section 4-22-2;

234 (ii) Heber Valley Historic Railroad Authority created ~~[in Title 63H, Chapter 4, Heber~~  
235 Valley Historic Railroad Authority] by Section 63H-4-102;

236 (iii) Utah State Railroad Museum Authority created ~~[in Title 63H, Chapter 5, Utah~~  
237 State Railroad Museum Authority] by Section 63H-5-102;

238 (iv) Utah Science Center Authority created ~~[in Title 63H, Chapter 3, Utah Science~~  
239 Center Authority] by Section 63H-3-103;

240 (v) Utah Housing Corporation created ~~[in Title 35A, Chapter 8, Part 7, Utah Housing~~  
241 Corporation Act] by Section 35A-8-704;

242 (vi) Utah State Fair Corporation created ~~[in Title 63H, Chapter 6, Utah State Fair~~  
243 Corporation Act] by Section 63H-6-103;

244 (vii) Workers' Compensation Fund created ~~[in Title 31A, Chapter 33, Workers'~~



245 ~~Compensation Fund]~~ by Section 31A-33-102;

246 (viii) ~~Utah State Retirement Office created [in Title 49, Chapter 11, Utah State~~  
247 ~~Retirement Systems Administration]~~ by Section 49-11-201;

248 (ix) ~~School and Institutional Trust Lands Administration created [in Title 53C, Chapter~~  
249 ~~1, Part 2, School and Institutional Trust Lands Administration]~~ by Section 53C-1-201;

250 (x) ~~Utah Communications Agency Network created [in Title 63C, Chapter 7, Utah~~  
251 ~~Communications Agency Network Act]~~ by Section 63C-7-201;

252 (xi) ~~Utah [Generated Renewable Energy Electricity Network Authority]~~ Energy  
253 Infrastructure Authority ~~created [in Title 63H, Chapter 2, Utah Generated Renewable Energy~~  
254 ~~Electricity Network Authority Act]~~ by Section 63H-2-201; [and]

255 (xii) ~~Utah Capital Investment Corporation created [in Title 63M, Chapter 1, Part 12,~~  
256 ~~Utah Venture Capital Enhancement Act.]~~ by Section 63M-1-1207; and

257 (xiii) Military Installation Development Authority created by Section 63H-1-201.

258 (c) Notwithstanding this Subsection (4), "independent entity" does not include:

259 (i) the Public Service Commission of Utah created [in] by Section 54-1-1;

260 (ii) an institution within the state system of higher education;

261 (iii) a city, county, or town;

262 (iv) a local school district;

263 (v) a local district under Title 17B, Limited Purpose Local Government Entities - Local  
264 Districts; or

265 (vi) a special service district under Title 17D, Chapter 1, Special Service District Act.

266 (5) "Independent state agency" means an entity that is created by the state, but is  
267 independent of the governor's direct supervisory control.

268 (6) "Money held in trust" means money maintained for the benefit of:

269 (a) one or more private individuals, including public employees;

270 (b) one or more public or private entities; or

271 (c) the owners of a quasi-public corporation.

272 (7) "Public corporation" means an artificial person, public in ownership, individually  
273 created by the state as a body politic and corporate for the administration of a public purpose  
274 relating to the state or its citizens.

275 (8) "Quasi-public corporation" means an artificial person, private in ownership,

276 individually created as a corporation by the state which has accepted from the state the grant of  
277 a franchise or contract involving the performance of a public purpose relating to the state or its  
278 citizens.

279 Section 5. Section **63E-1-304** is enacted to read:

280 **63E-1-304. Limitations on risk management coverage.**

281 (1) Except as specifically modified in its authorizing statute, an independent entity is  
282 not eligible to receive coverage under the Risk Management Fund created by Section  
283 63A-4-201.

284 (2) If an independent entity that receives coverage under the Risk Management Fund is  
285 involved in a commercial activity, the state risk manager may require that the entity:

286 (a) procure commercial insurance coverage or provide proof of vendor's insurance  
287 coverage for the commercial activity; and

288 (b) comply with loss prevention measures specified by the state risk manager.

289 Section 6. Section **63E-2-107** is amended to read:

290 **63E-2-107. Prohibited participation.**

291 Except as specifically modified in its authorizing statute, each independent corporation  
292 may not participate in the:

293 (1) issuance of bonds that are the obligation of the state; or

294 (2) services provided to state agencies, including:

295 (a) fuel dispensing;

296 (b) motor pool services;

297 (c) surplus property services;

298 [~~(d) risk management coverage;~~]

299 [~~(e)~~] (d) information technology services; or

300 [~~(f)~~] (e) archive services.

301 Section 7. Section **63H-4-108 (Effective 05/01/13)** is amended to read:

302 **63H-4-108 (Effective 05/01/13). Relation to certain acts.**

303 (1) The authority is exempt from:

304 (a) Title 51, Chapter 5, Funds Consolidation Act;

305 (b) Title 63A, Utah Administrative Services Code;

306 (c) Title 63G, Chapter 6a, Utah Procurement Code;

- 307 (d) Title 63J, Chapter 1, Budgetary Procedures Act; and  
308 (e) Title 67, Chapter 19, Utah State Personnel Management Act.  
309 (2) The authority is subject to audit by the state auditor pursuant to Title 67, Chapter 3,  
310 Auditor, and by the legislative auditor general pursuant to Section 36-12-15.  
311 (3) Subject to the requirements of Subsection 63E-1-304(2), the authority may  
312 participate in coverage under the Risk Management Fund created by Section 63A-4-201.  
313 Section 8. **Effective date.**  
314 (1) Except as provided in Subsection (2), this bill takes effect on May 14, 2013.  
315 (2) Section 53C-1-201(Effective 07/01/13) takes effect on July 1, 2013.

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**Legislative Review Note**  
**as of 11-15-12 1:11 PM**

**Office of Legislative Research and General Counsel**