

## Utah Model

### Overview:

- General Structure
  - Utah maintains 11 permanent funds; the smallest has a value of approximately \$1.9 million, and the largest has a value of approximately \$2.9 billion (the permanent State School Fund).
  - The 11 funds are pooled together for investment purposes.
  - Utah's Constitution creates a Uniform School Fund, which consists of: (1) money from the permanent State School Fund; (2) revenues that the legislature appropriates; and (3) other revenues received by the Uniform School Fund under any other provision of law or by donation.
  - Within the Uniform School Fund is the Trust Distribution Account, which consists of: (1) quarterly deposits of the State School Fund investment earnings distribution amount from the prior fiscal year; (2) all interest that the distribution account earned in the prior fiscal year; and (3) any unused appropriation from the administration of a state school land trust program.
  - Utah's Enabling Act of 1894 states (similar to Wyoming) that the sales of public lands in the state constitute a permanent fund, "the interest of which only shall be expended for the support of the common schools." The lands granted for educational purposes constitute a permanent school fund, "the interest of which only shall be expended for the support of said schools." (Sections 9 and 10)
  - Earnings ("Trust fund earnings") include any of the following that is in excess of the trust fund corpus: (1) realized or unrealized gains; (2) interest; (3) dividends; (4) other income; or (5) other sources of revenue. This definition in statute applies for purposes of funding office operations.
- Other General Observations
  - Utah made comprehensive changes to its constitution and statutes in 2016 to change the process by which school funds are invested and distributed. The Trust Distribution Account was created; language broadening the funds that could be available for distributions (from just interest and dividends) was added. The Constitution was amended to state that earnings (not just interest and dividends) could be distributed, and annual distributions could not exceed 4% of the fund, calculated as provided by statute.
  - Initially, the distribution amount could not exceed 4% of the average market value of the State School Fund based on an annual review of the past 12 consecutive quarters. This was changed to 20 quarters (5 years) in 2020.
- Inviolable Nature
  - The Utah Constitution does not appear to use the term "inviolable." Instead, the Constitution states that the State School Fund "shall be guaranteed by

the state against loss or diversion." Brief research also didn't reveal a mention of "inviolate" in statutes concerning trust funds.

- In a case addressing whether the University of Utah was an entity free from state control, the Utah Supreme Court noted that it would be "inconceivable" to give the University "free and uncontrolled custody and use of its property and funds, while making the State guarantee said funds against loss or diversion." University of Utah v. Bd. of Examiners, 295 P.2d 348, 370 (Utah 1956).
- Otherwise, there does not appear to be any recent judicial interpretation on what it means for the state to guarantee against loss or diversion. The Land Trusts Protection and Advocacy Office noted that the provision was meant to protect the misappropriation of trust lands or permanent funds, not necessarily for the recoupment of investment losses.
- Spending Policy
  - The Utah Constitution provides that annual distributions from the State School Fund may not exceed 4% of the fund, calculated as provided by statute.
  - Per current statute, the distribution amount is the lesser of: (1) 4% of the average market value of the State School Fund; or (2) an annual distribution calculation that's provided by statute.
- Calculation of Distribution Amount
  - To determine the average market value, statute provides that the SITF Office Director must complete a calculation that averages the value of the State School Fund for the past 20 consecutive quarters ending in the prior fiscal year.
  - To determine the annual distribution calculation, statute provides that this is the average of 4% of the average market value of the State School Fund for that fiscal year and the distribution amount in the prior fiscal year, multiplied by the sum of 1, the percent change in student enrollment from the school year two years prior to the prior school year, and the actual total percent change of the consumer price index (CPI for all urban consumers: all items less food and energy, Bureau of Labor Statistics) during the last 12 months as measured in June of the prior fiscal year.
  - Statute is silent on what monetary or investment sources can be used to generate the required distribution amount that is calculated per statute. Thus, it appears that distributions are not linked to interest, income, or earnings.
- Expenses
  - The State Institutional and Trust Funds Management Account is used to pay for SITFO's and the Board's expenses, including audits, legal services, manager fees, and so forth.
  - Trust fund earnings can be used to pay for these costs.

- Statute requires that an amount of trust fund earnings equal to the annual legislative appropriation to SITFO be deposited into the Management Account.
- If there are excess funds available, then the next year's deposit of trust fund earnings is reduced by the amount that was unspent from the previous year.
- Benchmark/Floor
  - Other than the constitutional duty that the state guarantees any losses or diversions, I don't see anything in statute or the constitution providing a floor for curtailing distributions if the fund loses value or goes underwater.
  - SITFO accounting practices distinguish between non-distributable funds and distributable funds, although both are invested together. While Utah may distribute earnings if the fund were to drop below a previous year's market value, if there are no distributable funds available at all, then there likely would be no distribution to the beneficiaries.
- Endowment Model
  - With the 2016 constitutional changes, there does not appear to be a requirement (at least in the constitution and statutes) to determine income, interest, and earnings and distribute only those amounts.
- Losses/Meyer Rule
  - It is unclear whether losses are netted against gains to determine the distributable amount. SITFO focuses on calculating the portfolio market value of the permanent funds and does not separately account for losses or net investment losses against investment gains. Any losses would be smoothed out through the 20-quarter average used to calculate the average market value.
- Other Issues
  - These changes to the funds came two years after Utah restructured the management of its investments by creating a School and Institutional Trust Fund Office, an independent state agency, to manage the trust fund. Within this office is a School and Institutional Trust Fund Board of Trustees, which consists of the state treasurer and four additional members that the treasurer appoints on an annual basis. The board has broad policymaking authority over the office and the trust fund. Later, in 2018, the Utah Legislature created the Land Trusts Protection and Advocacy Office, which oversees the School and Institutional Trust Fund Office to advocate for the beneficiaries of Utah's trust lands and to help the public understand and support the endowments of those trust lands and funds.

**Effective 7/1/2014**

**Chapter 1**  
**School and Institutional Trust Fund Management Act**

**Part 1**  
**General Provisions**

**53D-1-101 Title.**

- (1) This title is known as "School and Institutional Trust Fund Management and Land Trusts Protection and Advocacy Office."
- (2) This chapter is known as the "School and Institutional Trust Fund Management Act."

Amended by Chapter 448, 2018 General Session

**53D-1-102 Definitions.**

As used in this chapter:

- (1) "Account" means the School and Institutional Trust Fund Management Account, created in Section 53D-1-203.
- (2) "Advocacy office director" means the director of the Land Trusts Protection and Advocacy Office, appointed under Section 53D-2-203.
- (3) "Beneficiaries":
  - (a) means those for whose benefit the trust fund is managed and preserved, consistent with the enabling act, the Utah Constitution, and state law; and
  - (b) does not include other government institutions or agencies, the public at large, or the general welfare of the state.
- (4) "Board" means the board of trustees established in Section 53D-1-301.
- (5) "Director" means the director of the office.
- (6) "Enabling act" means the act of Congress, dated July 16, 1894, enabling the people of Utah to form a constitution and state government and to be admitted into the Union.
- (7) "Land Trusts Protection and Advocacy Office" or "advocacy office" means the Land Trusts Protection and Advocacy Office created in Section 53D-2-201.
- (8) "Nominating committee" means the committee established under Section 53D-1-501.
- (9) "Office" means the School and Institutional Trust Fund Office, created in Section 53D-1-201.
- (10) "Trust fund" means money derived from:
  - (a) the sale or use of land granted to the state under Sections 6, 8, and 12 of the enabling act;
  - (b) proceeds referred to in Section 9 of the enabling act from the sale of public land; and
  - (c) revenue and assets referred to in Utah Constitution, Article X, Section 5, Subsections (1)(c), (e), and (f).

Amended by Chapter 136, 2019 General Session

**53D-1-103 Application of other law.**

- (1) The office, board, and nominating committee are subject to:
  - (a) Title 52, Chapter 4, Open and Public Meetings Act; and
  - (b) Section 67-3-12.
- (2) Subject to Subsection 63E-1-304(2), the office may participate in coverage under the Risk Management Fund, created in Section 63A-4-201.

- (3) The office and board are subject to:
  - (a) Title 63G, Chapter 2, Government Records Access and Management Act, except for records relating to investment activities; and
  - (b) Title 63G, Chapter 6a, Utah Procurement Code.
- (4)
  - (a) In making rules under this chapter, the director is subject to and shall comply with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except as provided in Subsection (4)(b).
  - (b) Subsections 63G-3-301(6) and (7) and Section 63G-3-601 do not apply to the director's making of rules under this chapter.
- (5) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies to a board member to the same extent as it applies to an employee, as defined in Section 63G-7-102.
- (6)
  - (a) A board member, the director, and an office employee or agent are subject to:
    - (i) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; and
    - (ii) other requirements that the board establishes.
  - (b) In addition to any restrictions or requirements imposed under Subsection (6)(a), a board member, the director, and an office employee or agent may not directly or indirectly acquire an interest in the trust fund or receive any direct benefit from any transaction dealing with trust fund money.
- (7)
  - (a) Except as provided in Subsection (7)(b), the office shall comply with Title 63A, Chapter 17, Utah State Personnel Management Act.
  - (b)
    - (i) Upon a recommendation from the director after the director's consultation with the director of the Division of Human Resource Management, the board may provide that specified positions in the office are exempt from Section 63A-17-307 and the career service provisions of Title 63A, Chapter 17, Utah State Personnel Management Act, as provided in Subsection 63A-17-301(1), if the board determines that exemption is required for the office to fulfill efficiently its responsibilities under this chapter.
    - (ii) The director position is exempt from Section 63A-17-307 and the career service provisions of Title 63A, Chapter 17, Utah State Personnel Management Act, as provided in Subsection 63A-17-301(1).
    - (iii)
      - (A) After consultation with the director of the Division of Human Resource Management, the director shall set salaries for positions that are exempted under Subsection (7)(b)(i), within ranges that the board approves.
      - (B) In approving salary ranges for positions that are exempted under Subsection (7)(b)(i), the board shall consider salaries for similar positions in private enterprise and other public employment.
- (8) The office is subject to legislative appropriation, to executive branch budgetary review and recommendation, and to legislative and executive branch review.

Amended by Chapter 84, 2021 General Session  
Amended by Chapter 344, 2021 General Session

**53D-1-104 Attorney general representation.**

- (1) The attorney general shall:
  - (a) represent the board, director, and office in any legal action relating to the trust fund;

- (b) undertake suits for damages and any other necessary or appropriate relief in the name of the trust fund and the state; and
  - (c) ensure that legal counsel assigned to provide legal counsel to the board, director, and office is present at board meetings as needed.
- (2) The attorney general may institute an action to enforce this chapter or to protect the interests of beneficiaries.

Amended by Chapter 179, 2017 General Session

**53D-1-105 Annual audit by state auditor.**

- (1) The state auditor shall conduct an annual audit of the trust fund money and assets on a fund by fund basis, including:
- (a) an evaluation of the independent custodial arrangements made for the management and investment of trust fund money and assets; and
  - (b) a verification of the accuracy of the office's report of returns generated on the office's investments.
- (2) The state auditor shall:
- (a) report the results of an audit under this section in writing; and
  - (b) make the written audit report available to the public.
- (3) The state auditor shall consult with the board at least annually as to whether additional matters should be included within the scope of the annual audit.

Enacted by Chapter 426, 2014 General Session

**Part 2**  
**School and Institutional Trust Fund Office**

**53D-1-201 School and Institutional Trust Fund Office -- Status -- Duties.**

- (1) There is created within state government the School and Institutional Trust Fund Office.
- (2) The office is an independent state agency within the executive branch and is not a division of any other executive branch department.
- (3) The office shall manage the trust fund.
- (4) No later than September 1 of each year, the office shall provide to the Division of Finance financial information for the prior fiscal year that the Division of Finance requests for financial reporting purposes.

Enacted by Chapter 426, 2014 General Session

**53D-1-202 Access to office records and personnel.**

- (1) The office shall provide board members and the advocacy office director access to all office records and personnel as necessary for board members and the advocacy office director to fulfill their responsibilities to ensure that the office is in full compliance with applicable law and policies.
- (2) If the director requires, board members and the advocacy office director shall maintain confidentiality of information they obtain from office records and personnel.

Amended by Chapter 448, 2018 General Session

**53D-1-203 Funding of office operations.**

- (1) As used in this section, "trust fund earnings" includes any of the following that is in excess of the trust fund corpus:
  - (a) realized or unrealized gains;
  - (b) interest;
  - (c) dividends;
  - (d) other income; or
  - (e) other sources of revenue.
- (2) There is created an enterprise fund known as the School and Institutional Trust Fund Management Account.
- (3) The account is funded by money deposited into the account as provided in Subsection (4).
- (4) Except as provided in Subsection (5)(b), the director shall deposit into the account an amount of money from the trust fund earnings equal to the annual appropriation that the Legislature makes to the office, to pay for the office's operating costs.
- (5)
  - (a) The office may use money in the account to pay for the office's operating costs.
  - (b) If the amount of money deposited into the account under Subsection (4) in any fiscal year exceeds the amount required by the office during that fiscal year to fund the office's operations, the office shall, in the following fiscal year, reduce the amount deposited into the account under Subsection (4) by the amount of the unspent appropriation.
- (6)
  - (a) The office may deduct from trust fund earnings:
    - (i) the cost for any audit, risk management, consulting, equipment, legal services, software, research, or custodial services; or
    - (ii) manager fees incurred in managing the trust fund assets.
  - (b) The costs and fees described in Subsection (6)(a) are separate from and in addition to the office's operating costs that are paid from the account.

Amended by Chapter 191, 2019 General Session

**Part 3**  
**School and Institutional Trust Fund Board of Trustees**

**53D-1-301 Board of trustees -- Creation -- Membership.**

- (1) There is created a School and Institutional Trust Fund Board of Trustees.
- (2) The board consists of:
  - (a) the state treasurer; and
  - (b) four additional members who are appointed by the state treasurer on a nonpartisan basis from a list of at least two qualified candidates per position, nominated by the nominating committee, as provided in Section 53D-1-503.
- (3) The state treasurer shall appoint members under Subsection (2)(b) who possess:
  - (a) outstanding professional qualifications pertinent to the prudent investment of trust fund money; and
  - (b) expertise in institutional investment management.

- (4)
  - (a) The term of a board member under Subsection (2)(b) is six years.
  - (b) Notwithstanding Subsection (4)(a), the nominating committee shall stagger terms of initial board members so that the term of not more than one member expires in any year.
  - (c) A board member may not serve consecutive terms, except that:
    - (i) a board member whose term is less than six years because of the staggering of terms under Subsection (4)(b) may serve a full consecutive term after the completion of the initial term; and
    - (ii) a member appointed to fill a vacancy may serve a full consecutive term after filling a previous unexpired term.
  - (d) A board member shall serve until a successor is appointed, confirmed, and qualified.
- (5) Before assuming duties as a board member, a member shall take an oath of office that includes the following:

"I solemnly swear to carry out my duties as a member of the School and Institutional Trust Fund Board of Trustees and to act with undivided loyalty to the beneficiaries of the trust fund that the board oversees, to the best of my abilities and consistent with the law."
- (6) The state treasurer may remove a board member for cause, subject to the affirmative vote of at least two other board members, besides the state treasurer.
- (7) The state treasurer shall fill a vacancy in the same manner as the initial appointment under Subsection (2)(b).
- (8) A board member may not receive any compensation or benefits for the member's service, but the member may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 258, 2015 General Session

**53D-1-302 Board chair and vice chair -- Quorum.**

- (1)
  - (a) The state treasurer is the chair of the board.
  - (b) The chair shall faithfully represent the will of the board to the extent the board's will is consistent with state law.
- (2)
  - (a) The board shall annually select a vice chair from its membership.
  - (b) The vice chair shall act as chair in the absence of the chair.
- (3)
  - (a) Three members of the board constitute a quorum for the purpose of holding a meeting.
  - (b) Unless otherwise specified in this title, an action of the board requires the affirmative vote of at least three members.

Enacted by Chapter 426, 2014 General Session

**53D-1-303 Board authority and duties.**

- (1) The board has broad policymaking authority over the office and the trust fund.
- (2)
  - (a) The board shall establish policies for the management of:
    - (i) the office, including:



- (A) an investment management code of conduct and associated compliance policy;
  - (B) a policy for the strategic allocation of trust fund assets;
  - (C) a soft dollar policy; and
  - (D) a policy articulating the board's investment philosophy for trust fund assets; and
- (ii) the trust fund.
- (b) Policies that the board adopts shall:
- (i) be consistent with the enabling act, the Utah Constitution, and other applicable state law;
  - (ii) reflect undivided loyalty to the beneficiaries consistent with fiduciary duties;
  - (iii) be designed to prudently optimize trust fund returns and increase the value of the trust fund, consistent with the balancing of short-term and long-term interests, so that the fiduciary duty of intergenerational equity is met;
  - (iv) be designed to maintain the integrity of the trust fund and prevent the misapplication of money in the trust fund;
  - (v) enable the board to oversee the activities of the office; and
  - (vi) otherwise be in accordance with standard trust principles as provided by state law.
- (3) The board shall:
- (a) establish a conflict of interest policy for the office and board members;
  - (b) establish policies governing the evaluation, selection, and monitoring of independent custodial arrangements;
  - (c) ensure that the office is managed according to law;
  - (d) establish bylaws to govern the board;
  - (e) establish the compensation of the director;
  - (f) annually examine the compensation and performance of the director as part of the board's budget review process;
  - (g) annually report the director's compensation to the Legislature; and
  - (h)
    - (i) adopt policies to provide for annual training of board members regarding their duties and responsibilities; and
    - (ii) ensure that any training described in Subsection (3)(h)(i) complies with Title 63G, Chapter 22, State Training and Certification Requirements.
- (4) The board may:
- (a) after conferring with the director:
    - (i) hire one or more consultants to advise the board, director, or office on issues affecting the management of the trust fund; and
    - (ii) pay compensation to any consultant hired under Subsection (4)(a)(i), subject to budgetary constraints; and
  - (b) submit to the director a written question or set of questions concerning policies and practices affecting the management of the trust fund.

Amended by Chapter 200, 2018 General Session

**53D-1-304 Board meetings -- Closed meetings.**

- (1) The board shall hold at least four meetings per year to conduct business.
- (2) The board chair or two board members:
  - (a) may call a board meeting; and
  - (b) if calling a board meeting, shall provide as much advance notice as is reasonable under the circumstances to all board members, the director, and the advocacy office director.
- (3) Any board member may place an item on a board meeting agenda.

- (4) The board shall adopt a set of parliamentary procedures to govern board meetings.
- (5) The board may establish an attendance policy to govern the attendance of board members at board meetings.
- (6)
  - (a) Notwithstanding Subsection 52-4-204(2) or 52-4-205(1), and in addition to the reasons to close a meeting described in Section 52-4-205, the board may hold a closed meeting to discuss the sale or purchase of identifiable securities, investment funds, or investment contracts if:
    - (i) the board, the director, or the office has entered into a confidentiality agreement related to the identifiable securities, investment funds, or investment contracts; and
    - (ii) two-thirds of the members present when a quorum is present vote to close the meeting for the purpose described in this Subsection (6)(a).
  - (b) If the board closes a meeting in accordance with Subsection (6)(a), the board shall comply with the requirements for closed meetings described in Title 52, Chapter 4, Open and Public Meetings Act.

Amended by Chapter 336, 2021 General Session

## **Part 4 Director**

### **53D-1-401 Appointment of director -- Qualifications -- Nature of employment -- Removal by petition.**

- (1) The office shall be managed by a director.
- (2) If there is a vacancy in the director position, the board shall appoint an individual as director.
- (3) The board shall ensure that an individual appointed as director possesses:
  - (a) outstanding professional qualifications pertinent to the prudent investment of trust fund money; and
  - (b) expertise in institutional investment management.
- (4) The director is an at-will employee who may be removed by the board at any time with or without cause.
- (5)
  - (a) The advocacy office director may submit a written petition to the board requesting the board to remove the director for cause, explained in the petition.
  - (b) The board shall hold a hearing on a petition under Subsection (5)(a) within 45 days after receiving the petition.
  - (c) If, after holding a hearing, the board finds by a preponderance of the evidence that there is cause for removing the director, the board shall remove the director.

Amended by Chapter 448, 2018 General Session

### **53D-1-402 Director duties and responsibilities.**

- (1) The director has broad authority to manage the office to fulfill its purposes, consistent with the enabling act, the Utah Constitution, state law, and board policies.
- (2) The director shall:
  - (a) before assuming the duties of director, take an oath that includes the following:

"I solemnly swear to carry out my duties as director of the School and Institutional Trust Fund Office with undivided loyalty to the beneficiaries of the trust fund managed by the office, to the best of my abilities and consistent with the law.";

- (b) carry out the policies of the board;
  - (c) act with undivided loyalty to those entitled to the benefit of income from the trust fund, consistent with the director's fiduciary duties and responsibilities;
  - (d) follow the prudent investor rule, prudently seeking to obtain the optimum return from the investment of trust fund money and assets, balancing short-term and long-term interests under the principle of intergenerational equity;
  - (e) exercise full discretionary authority to manage, maintain, transfer, or sell assets of the trust fund in the manner that the director determines to be most favorable to beneficiaries;
  - (f) maintain the integrity of the trust fund and prevent, through prudent management, the misapplication of trust fund money;
  - (g) adopt rules, as provided in Subsection 53D-1-103(4), that are necessary for the proper exercise of the director's duties under this chapter and policies established by the board;
  - (h) faithfully manage the office under policies established by the board;
  - (i) annually submit to the board:
    - (i) an office budget; and
    - (ii) a financial plan for operations of the office;
  - (j) after board approval of the office budget, submit the budget to the governor and the Legislature;
  - (k) direct and control budget expenditures;
  - (l) establish job descriptions and, within budgetary constraints, employ staff necessary to accomplish the purposes of the office;
  - (m) in accordance with generally accepted principles of fund accounting, establish a system to identify and account for the trust fund assets;
  - (n) notify the advocacy office director of major items that the director knows may be useful to the advocacy office director in protecting the rights of beneficiaries;
  - (o) maintain appropriate records of trust fund activities to enable auditors to conduct periodic audits;
  - (p) respond in writing within a reasonable time to a request by the advocacy office director for information on policies and practices affecting the management of the trust fund; and
  - (q) respond to a question that the board submits under Subsection 53D-1-303(4)(b) within a reasonable time after receiving the question.
- (3) The office may:
- (a) sue or be sued; and
  - (b) contract with other public agencies for personnel management services.

Amended by Chapter 448, 2018 General Session

**53D-1-403 Reports.**

- (1) At least annually, the director shall report in person to the Legislative Management Committee, the governor, and the advocacy office, concerning the office's investments, performance, estimated distributions, and other activities.
- (2) The director shall report to the board concerning the work of the director and the investment activities and other activities of the office:
  - (a) in a public meeting at least six times per year; and
  - (b) as otherwise requested by the board.

- (3)
  - (a) Before November 1 of each year, the director shall:
    - (i) submit a written report to school community councils, created under Section 53G-7-1202, and charter trust land councils, established under Section 53G-7-1205, concerning the office's investments, performance, estimated distributions, and other activities; and
    - (ii) post the written report described in Subsection (3)(a)(i) on the office's website.
  - (b) A report under Subsection (3)(a) shall be prepared in simple language designed to be understood by the general public.
- (4) The director shall provide to the board:
  - (a) monthly written reports on the activities of the office;
  - (b) quarterly financial reports; and
  - (c) any other report requested by the board.
- (5) The director shall:
  - (a) invite the advocacy office director to attend any meeting at which the director gives a report under this section; and
  - (b) provide the advocacy office director:
    - (i) a copy of any written report prepared under this section; and
    - (ii) any other report requested by the advocacy office director.

Amended by Chapter 415, 2018 General Session

Amended by Chapter 448, 2018 General Session

## **Part 5 Nominating Committee**

### **53D-1-501 Nominating committee -- Membership -- Terms -- Vacancies -- Compensation.**

- (1) There is established a School and Institutional Trust Fund Nominating Committee.
- (2) The nominating committee consists of:
  - (a) four members, appointed by the state treasurer upon recommendation by the advocacy office director, each of whom is a member of a respected professional investment organization;
  - (b) the chief investment officer of the University of Utah endowment;
  - (c) the chief investment officer of the Utah State University endowment; and
  - (d) the advocacy office director.
- (3) An individual appointed as a member of the nominating committee under Subsection (2)(a) shall be appointed based on the individual's expertise in:
  - (a) investment finance;
  - (b) institutional asset management;
  - (c) trust administration; or
  - (d) the practice of law in the areas of capital markets, securities law, trusts, foundations, endowments, investment finance, institutional asset management, or trust administration.
- (4) The term of a member appointed under Subsection (2)(a) is four years.
- (5) A nominating committee member shall serve until a successor is appointed and qualified.
- (6)
  - (a) If a member appointed under Subsection (2)(a) leaves office, the vacancy shall be filled in the same manner as the initial appointment under Subsection (2)(a).

- (b) An individual appointed to fill a vacancy under Subsection (6)(a) serves the remainder of the unexpired term.
- (7) A member of the nominating committee may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 448, 2018 General Session

**53D-1-502 Chair and vice chair -- Quorum and voting requirements -- Bylaws -- Staff.**

- (1) The nominating committee shall select a chair and vice chair from its members.
- (2)
  - (a) Four members of the nominating committee constitute a quorum.
  - (b) An action of the nominating committee requires the affirmative vote of at least four members.
- (3) The nominating committee shall establish bylaws to govern the nominating committee.
- (4) The advocacy office shall provide staff support to the nominating committee.

Amended by Chapter 448, 2018 General Session

**53D-1-503 Process of nominating candidates for board membership.**

- (1) The nominating committee shall nominate at least two candidates for each position or vacancy on the board.
- (2) The nominating committee shall:
  - (a) nominate candidates who meet the criteria stated in Subsection 53D-1-301(3); and
  - (b) consider the character and reputation of candidates the nominating committee nominates.
- (3) If the state treasurer considers the candidates nominated under Subsection (1) to be unacceptable, the state treasurer may request the nominating committee to nominate at least two other candidates per appointment.
- (4) As many times as the state treasurer considers candidates nominated by the nominating committee to be unacceptable under Subsection (3), the nominating committee shall follow the process described in Subsections (1) and (2) until the state treasurer appoints a candidate.

Enacted by Chapter 426, 2014 General Session

**Part 6**  
**Management and Investment Standards and Principles**

**53D-1-601 General management and investment principles -- Duty of person with special skills or expertise.**

- (1) Board members, the director, and office staff shall act in the best interests of the beneficiaries and comply with the duty of undivided loyalty to the beneficiaries.
- (2) A person who manages and invests trust fund money or assets shall:
  - (a) manage and invest in good faith and with the care a prudent professional in a like position would exercise under similar circumstances;
  - (b) consider, as relevant:

- (i) general economic conditions;
  - (ii) the possible effect of inflation or deflation;
  - (iii) any expected tax consequences of investment decisions or strategies;
  - (iv) the role that each investment or course of action plays within the overall investment portfolio of the trust fund;
  - (v) the expected net return from income and the appreciation of investments;
  - (vi) the expected returns and risk characteristics of individual assets;
  - (vii) the needs of the beneficiaries to receive distributions and to preserve capital;
  - (viii) liquidity;
  - (ix) asset allocation; and
  - (x) costs and management fees; and
- (c) make management and investment decisions about an individual asset not in isolation but in the context of the trust fund's portfolio of investments as a whole and as part of an overall investment strategy, having risk and return objectives reasonably suited to the trust fund and to the beneficiaries.
- (3) A person who has special skills or expertise, or who is selected to assist in managing and investing the trust fund money or assets based on the person's representation of having special skills or expertise, has a duty to use those skills and that expertise in managing and investing trust fund money and assets.

Enacted by Chapter 426, 2014 General Session

**53D-1-602 Office authority, responsibilities, and duties.**

- (1) In managing and investing trust fund money and assets, the office:
- (a) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the trust fund, and the skills available to the office; and
  - (b) shall make a reasonable effort to verify facts related to the management and investment of trust fund money and assets.
- (2) Except as otherwise provided by law, the office may invest in any kind of property or any type of investment that is:
- (a) consistent with this part; and
  - (b) in the best interests of the beneficiaries.
- (3) The office shall diversify the investments of trust fund money and assets.
- (4) Within a reasonable time after receiving a contribution to the trust fund, the office shall make and carry out decisions concerning the retention or disposition of the contribution or to rebalance the trust fund portfolio, in order to bring the trust fund into compliance with the purposes, terms, and distribution requirements of trust fund money and assets.
- (5) The board may delegate any management or investment function to the director, a committee of board members, or an employee of the office.

Enacted by Chapter 426, 2014 General Session

**53D-1-603 Director authority, responsibilities, and duties.**

- (1)
- (a) The director may delegate to an external agent the management of a portion of the trust fund money or assets, if the delegation is prudent under the circumstances and consistent with the purposes of the trust fund.

- (b) The director shall periodically review the actions of an agent under Subsection (1)(a) in order to monitor the agent's performance and compliance with the scope and terms of the delegation.
- (2) The director shall act in good faith, with the care that a prudent professional in a like position would exercise under similar circumstances, in:
  - (a) selecting an agent;
  - (b) establishing the scope and terms of a delegation under Subsection (1); and
  - (c) periodically reviewing the agent's actions, as provided in Subsection (1)(b).
- (3) In performing a delegated function, an agent owes a duty to the state and the beneficiaries to exercise reasonable care to comply with the scope and terms of the delegation.

Enacted by Chapter 426, 2014 General Session

**53D-1-604 Compliance not determined by hindsight.**

Compliance with a provision of this part in making a decision or taking an action is determined in light of the facts and circumstances existing at the time a decision is made or an action is taken and not by hindsight.

Enacted by Chapter 426, 2014 General Session

**Part 7**  
**Review of Decisions or Actions**

**53D-1-701 Petition for review of director or office decision or action -- Hearing examiner -- Decision -- Judicial review.**

- (1)
  - (a) Subject to Subsection (1)(b), a person aggrieved by a decision or action of the director or office may, in accordance with rules adopted by the board under Section 53D-1-702, petition the board for an administrative review of the decision or action.
  - (b) A person may not petition for review of:
    - (i) a decision whether to buy, sell, hold, or exchange a specific investment; or
    - (ii) an action to buy, sell, hold, or exchange a specific investment.
- (2)
  - (a) The board may appoint a qualified hearing examiner to take evidence and make a recommendation for board action on the petition.
  - (b) If the board appoints a hearing examiner under Subsection (2)(a), the board shall, in conducting its review and making its decision on the petition, consider the hearing examiner's recommendation.
- (3) In making its decision on the petition, the board shall:
  - (a) make findings and conclusions and base its decision on the findings and conclusions;
  - (b) uphold the decision or action of the director or office unless the board finds, by a preponderance of the evidence, that the decision or action violated applicable law, policy, or rule; and
  - (c) inform the person who filed the petition of the person's right to judicial review of the board's decision.

- (4) A person aggrieved by a final decision of the board on a petition filed under this section may seek judicial review of that decision as provided in Sections 63G-4-402 and 63G-4-403.

Enacted by Chapter 426, 2014 General Session

**53D-1-702 Board rules on petition for review of director or office decision or action.**

- (1) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to govern proceedings on a petition under Section 53D-1-701.
- (2) Rules under Subsection (1) shall ensure procedural due process in proceedings relating to a petition under Section 53D-1-701.

Enacted by Chapter 426, 2014 General Session



**Effective 7/1/2021**

**53F-9-201 Uniform School Fund -- Contents -- Trust Distribution Account.**

- (1) As used in this section:
  - (a) "Annual distribution calculation" means, for a given fiscal year, the average of:
    - (i) 4% of the average market value of the State School Fund for that fiscal year; and
    - (ii) the distribution amount for the prior fiscal year, multiplied by the sum of:
      - (A) one;
      - (B) the percent change in student enrollment from the school year two years prior to the prior school year; and
      - (C) the actual total percent change of the consumer price index during the last 12 months as measured in June of the prior fiscal year.
  - (b) "Average market value of the State School Fund" means the results of a calculation completed by the SITFO director each fiscal year that averages the value of the State School Fund for the past 20 consecutive quarters ending in the prior fiscal year.
  - (c) "Consumer price index" means the Consumer Price Index for All Urban Consumers: All Items Less Food & Energy, as published by the Bureau of Labor Statistics of the United States Department of Labor.
  - (d) "SITFO director" means the director of the School and Institutional Trust Fund Office appointed under Section 53D-1-401.
  - (e) "State School Fund investment earnings distribution amount" or "distribution amount" means, for a fiscal year, the lesser of:
    - (i) the annual distribution calculation; or
    - (ii) 4% of the average market value of the State School Fund.
- (2) The Uniform School Fund, a special revenue fund within the Education Fund, established by Utah Constitution, Article X, Section 5, consists of:
  - (a) distributions derived from the investment of money in the permanent State School Fund established by Utah Constitution, Article X, Section 5;
  - (b) money transferred to the fund pursuant to Title 67, Chapter 4a, Revised Uniform Unclaimed Property Act; and
  - (c) all other constitutional or legislative allocations to the fund, including:
    - (i) appropriations for the Minimum School Program, enrollment growth, and inflation under Section 53F-9-201.1; and
    - (ii) revenues received by donation.
- (3)
  - (a) There is created within the Uniform School Fund a restricted account known as the Trust Distribution Account.
  - (b) The Trust Distribution Account consists of:
    - (i) in accordance with Subsection (4), quarterly deposits of the State School Fund investment earnings distribution amount from the prior fiscal year;
    - (ii) all interest earned on the Trust Distribution Account in the prior fiscal year; and
    - (iii) any unused appropriation for the administration of the School LAND Trust Program, as described in Subsection 53F-2-404(1)(c).
- (4) If, at the end of a fiscal year, the Trust Distribution Account has a balance remaining after subtracting the appropriation amount described in Subsection 53F-2-404(1)(a) for the next fiscal year, the SITFO director shall, during the next fiscal year, apply the amount of the remaining balance from the prior fiscal year toward the current fiscal year's distribution amount by reducing a quarterly deposit to the Trust Distribution Account by the amount of the remaining balance from the prior fiscal year.

- (5) On or before October 1 of each year, the SITFO director shall:
  - (a) in accordance with this section, determine the distribution amount for the following fiscal year; and
  - (b) report the amount described in Subsection (5)(a) as the funding amount, described in Subsection 53F-2-404(1)(c), for the School LAND Trust Program, to:
    - (i) the State Treasurer;
    - (ii) the Legislative Fiscal Analyst;
    - (iii) the Division of Finance;
    - (iv) the director of the Land Trusts Protection and Advocacy Office, appointed under Section 53D-2-203;
    - (v) the School and Institutional Trust Lands Administration created in Section 53C-1-201;
    - (vi) the state board; and
    - (vii) the Governor's Office of Planning and Budget.
- (6) The School and Institutional Trust Fund Board of Trustees created in Section 53D-1-301 shall:
  - (a) annually review the distribution amount; and
  - (b) make recommendations, if necessary, to the Legislature for changes to the formula for calculating the distribution amount.
- (7) Upon appropriation by the Legislature, the SITFO director shall place in the Trust Distribution Account funds for the School LAND Trust Program as described in Subsections 53F-2-404(1)(a) and (c).

Amended by Chapter 336, 2021 General Session

Amended by Chapter 382, 2021 General Session

**Effective 7/1/2017**

**Article X, Section 5 [State School Fund and Uniform School Fund -- Establishment and use -- Debt guaranty.]**

- (1) There is established a permanent State School Fund which consists of:
  - (a) proceeds from the sales of all lands granted by the United States to this state for the support of the public elementary and secondary schools;
  - (b) 5% of the net proceeds from the sales of United States public lands lying within this state;
  - (c) all revenues derived from nonrenewable resources on state lands, other than sovereign lands and lands granted for other specific purposes;
  - (d) all revenues derived from the use of school trust lands;
  - (e) revenues appropriated by the Legislature; and
  - (f) other revenues and assets received by the permanent State School Fund under any other provision of law or by bequest or donation.
- (2)
  - (a) The permanent State School Fund shall be prudently invested by the state and shall be held by the state in perpetuity.
  - (b) Only earnings received from investment of the permanent State School Fund may be distributed from the fund, and any distribution from the fund shall be for the support of the public education system as defined in Article X, Section 2 of this constitution.
  - (c) Annual distributions from the permanent State School Fund under Subsection (2)(b) may not exceed 4% of the fund, calculated as provided by statute.
  - (d) The Legislature may make appropriations from school trust land revenues to provide funding necessary for the proper administration and management of those lands consistent with the state's fiduciary responsibilities towards the beneficiaries of the school land trust. Unexpended balances remaining from the appropriation at the end of each fiscal year shall be deposited in the permanent State School Fund.
  - (e) The permanent State School Fund shall be guaranteed by the state against loss or diversion.
- (3) There is established a Uniform School Fund which consists of:
  - (a) money from the permanent State School Fund;
  - (b) revenues appropriated by the Legislature; and
  - (c) other revenues received by the Uniform School Fund under any other provision of law or by donation.
- (4) The Uniform School Fund shall be maintained and used for the support of the state's public education system as defined in Article X, Section 2 of this constitution and apportioned as the Legislature shall provide.
- (5)
  - (a) Notwithstanding Article VI, Section 29, the State may guarantee the debt of school districts created in accordance with Article XIV, Section 3, and may guarantee debt incurred to refund the school district debt. Any debt guaranty, the school district debt guaranteed thereby, or any borrowing of the state undertaken to facilitate the payment of the state's obligation under any debt guaranty shall not be included as a debt of the state for purposes of the 1.5% limitation of Article XIV, Section 1.
  - (b) The Legislature may provide that reimbursement to the state shall be obtained from monies which otherwise would be used for the support of the educational programs of the school district which incurred the debt with respect to which a payment under the state's guaranty was made.