

MILITARY INSTALLATION DEVELOPMENT

AUTHORITY

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheldon L. Killpack

House Sponsor: Brad L. Dee

Cosponsors:

Dan R. Eastman

John L. Valentine

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LONG TITLE

General Description:

This bill enacts provisions related to the Military Installation Development Authority.

Highlighted Provisions:

This bill:

- ▶ creates a separate, independent, nonprofit body corporate and politic known as the Military Installation Development Authority;
- ▶ provides for an appointed board to govern the authority;
- ▶ provides for the authority's powers;
- ▶ authorizes an authority to develop military land, use tax increment, and issue bonds;
- ▶ exempts an authority from land use laws;
- ▶ provides a process for an authority to adopt a project area plan;
- ▶ provides for budgeting, auditing, and financial reports; and
- ▶ enacts provisions relating to an authority's dissolution.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

ENACTS:

58 CHAPTER 1. MILITARY INSTALLATION DEVELOPMENT AUTHORITY ACT

59 Part 1. General Provisions

60 **63H-1-101. Title.**

61 This chapter is known as the "Military Installation Development Authority Act."

62 Section 2. Section **63H-1-102** is enacted to read:

63 **63H-1-102. Definitions.**

64 As used in this chapter:

65 (1) "Authority" means the Military Installation Development Authority, created under
66 Section 63H-1-201.

67 (2) "Base taxable value" means the taxable value of the property within a project area
68 from which tax increment will be collected, as shown upon the assessment roll last equalized
69 before the effective date of the project area plan.

70 (3) "Board" means the governing body of the authority created under Section
71 63H-1-301.

72 (4) "Development project" means a project to develop military land.

73 (5) "Military land" means land owned by the federal government that is part of an
74 active or closed federal defense and military installation.

75 (6) "Project area" means the geographic area described in a project area plan or draft
76 project area plan where the development project set forth in the project area plan or draft
77 project area plan takes place or is proposed to take place.

78 (7) "Project area budget" means a multiyear projection of annual or cumulative
79 revenues and expenses and other fiscal matters pertaining to a project area that includes:

80 (a) the base taxable value of property in the project area;

81 (b) the projected tax increment expected to be generated within the project area;

82 (c) the amount of tax increment expected to be shared with other taxing entities;

83 (d) the amount of tax increment expected to be used to implement the project area plan,
84 including the estimated amount of tax increment to be used for land acquisition, public
85 improvements, infrastructure improvements, and loans, grants, or other incentives to private

86 and public entities:

87 (e) the tax increment expected to be used to cover the cost of administering the project
88 area plan:

89 (f) if the area from which tax increment is to be collected is less than the entire project
90 area:

91 (i) the tax identification numbers of the parcels from which tax increment will be
92 collected; or

93 (ii) a legal description of the portion of the project area from which tax increment will
94 be collected; and

95 (g) for property that the agency owns or leases and expects to sell or sublease, the
96 expected total cost of the property to the agency and the expected selling price or lease
97 payments.

98 (8) "Project area plan" means a written plan that, after its effective date, guides and
99 controls the development within a project area.

100 (9) "Property tax" includes privilege tax and each levy on an ad valorem basis on
101 tangible or intangible personal or real property.

102 (10) "Public entity" means:

103 (a) the state, including any of its departments or agencies; or

104 (b) a political subdivision of the state, including a county, city, town, school district,
105 special district, local district, or interlocal cooperation entity.

106 (11) "Publicly owned infrastructure and improvements" means water, sewer, storm
107 drainage, electrical, and other similar systems and lines, streets, roads, curb, gutter, sidewalk,
108 walkways, parking facilities, public transportation facilities, and other facilities, infrastructure,
109 and improvements benefitting the public and to be publicly owned or publicly maintained or
110 operated.

111 (12) "Record property owner" or "record owner of property" means the owner of real
112 property as shown on the records of the recorder of the county in which the property is located
113 and includes a purchaser under a real estate contract if the contract is recorded in the office of

114 the recorder of the county in which the property is located or the purchaser gives written notice
115 of the real estate contract to the agency.

116 (13) "Taxable value" means the value of property as shown on the last equalized
117 assessment roll as certified by the county assessor.

118 (14) "Tax increment" means the difference between:

119 (a) the amount of property tax revenues generated each tax year by all taxing entities
120 from the area within a project area designated in the project area plan as the area from which
121 tax increment is to be collected, using the current assessed value of the property; and

122 (b) the amount of property tax revenues that would be generated from that same area
123 using the base taxable value of the property.

124 (15) "Taxing entity" means a public entity that levies a tax on property within a
125 community.

126 Section 3. Section **63H-1-201** is enacted to read:

127 **Part 2. Creation of Authority**

128 **63H-1-201. Creation of Military Installation Development Authority.**

129 (1) There is created a Military Installation Development Authority.

130 (2) The authority is an independent, nonprofit, separate body corporate and politic,
131 with perpetual succession.

132 (3) The authority may:

133 (a) sue and be sued;

134 (b) enter into contracts generally;

135 (c) buy, obtain an option upon, or otherwise acquire any interest in real or personal
136 property within the boundaries of a military installation;

137 (d) sell, convey, grant, dispose of by gift, or otherwise dispose of any interest in real or
138 personal property;

139 (e) enter into a lease agreement on real or personal property, either as lessee or lessor,
140 within the boundaries of a military installation;

141 (f) provide for the development of military land under contracts with the federal

142 government;

143 (g) receive tax increment as provided in this chapter;

144 (h) accept financial or other assistance from any public or private source for the
145 authority's activities, powers, and duties, and expend any funds so received for any of the
146 purposes of this chapter;

147 (i) borrow money or accept financial or other assistance from the federal government, a
148 public entity, or any other source for any of the purposes of this chapter and comply with any
149 conditions of the loan or assistance;

150 (j) issue bonds to finance the undertaking of any development objectives of the
151 authority;

152 (k) hire employees;

153 (l) transact other business and exercise all other powers provided for in this chapter;

154 and

155 (m) enter into a partnership agreement with a developer of military land.

156 Section 4. Section **63H-1-301** is enacted to read:

157 **Part 3. Authority Board**

158 **63H-1-301. Authority board.**

159 (1) The authority shall be governed by a board which shall manage and conduct the
160 business and affairs of the authority and shall determine all questions of authority policy.

161 (2) All powers of the authority are exercised through the board.

162 Section 5. Section **63H-1-302** is enacted to read:

163 **63H-1-302. Number of board members -- Appointment.**

164 (1) The authority's board shall consist of seven members.

165 (2) Five members of the board shall be appointed by the governor as follows:

166 (a) one member shall be appointed from recommendations from the Utah Defense
167 Alliance;

168 (b) three members shall be appointed, each of whom is a mayor of a municipality
169 adjacent to a military installation; and

170 (c) one member shall be appointed from the Governor's Office of Economic
171 Development.

172 (3) The president of the Senate and the speaker of the House of Representatives shall
173 each appoint one board member.

174 (4) (a) Each vacancy shall be filled in the same manner under this section as the
175 appointment of the member whose vacancy is being filled.

176 (b) Each person appointed to fill a vacancy shall serve the remaining unexpired term of
177 the member whose vacancy the person is filling.

178 (c) If a mayor appointed under Subsection (2)(b) leaves office as mayor, a vacancy on
179 the board occurs and the governor shall appoint another mayor, as provided in Subsection
180 (2)(b), to fill the vacancy.

181 Section 6. Section **63H-1-303** is enacted to read:

182 **63H-1-303. Term of board members.**

183 (1) The term of board members is four years, except that the term of the members of
184 the initial board shall be staggered so that the terms of approximately half the board members
185 expires every two years.

186 (2) Each board member shall serve until a successor is duly appointed and qualified.

187 Section 7. Section **63H-1-401** is enacted to read:

188 **Part 4. Project Area Plan**

189 **63H-1-401. Preparation of project area plan -- Required contents of project area**
190 **plan.**

191 (1) Before spending any funds or entering into any lease or development agreement and
192 subject to Section 63H-1-402, the authority board shall prepare a project area plan.

193 (2) Each project area plan under Subsection (1) shall contain:

194 (a) a legal description of the boundaries of the project area that is the subject of the
195 project area plan;

196 (b) the authority's purposes and intent with respect to the project area; and

197 (c) the board's findings and determination that:

- 198 (i) there is a need to effectuate a public purpose;
- 199 (ii) there is a public benefit to the proposed development project;
- 200 (iii) it is economically sound and feasible to adopt and carry out the project area plan;
- 201 and
- 202 (iv) carrying out the project area plan will promote the public peace, health, safety, and
- 203 welfare of the community in which the project area is located.

204 Section 8. Section **63H-1-402** is enacted to read:

205 **63H-1-402. Public meeting to discuss preparation of project area plan -- Notice.**

206 (1) The authority board shall hold at least one public meeting to discuss the preparation

207 of the project area plan.

208 (2) The authority board shall give notice of each public meeting under Subsection (1)

209 to affected entities.

210 (3) Upon completion of the project area plan, the board shall provide notice of the time

211 and place of the meeting at which it will consider adoption of the plan.

212 Section 9. Section **63H-1-403** is enacted to read:

213 **63H-1-403. Notice of project area plan adoption -- Effective date of plan --**

214 **Contesting the formation of the plan.**

215 (1) (a) Upon the board's adoption of a project area plan, the board shall provide notice

216 as provided in Subsection (1)(b) by:

217 (i) publishing or causing to be published a notice in a newspaper of general circulation

218 within the authority's boundaries; or

219 (ii) if there is no newspaper of general circulation within the authority's boundaries,

220 causing a notice to be posted in at least three public places within the authority's boundaries.

221 (b) Each notice under Subsection (1)(a) shall:

222 (i) set forth the board resolution adopting the project area plan or a summary of the

223 resolution; and

224 (ii) include a statement that the project area plan is available for general public

225 inspection and the hours for inspection.

- 226 (2) The project area plan shall become effective on the date of:
- 227 (a) if notice was published under Subsection (1)(a), publication of the notice; or
- 228 (b) if notice was posted under Subsection (1)(a), posting of the notice.
- 229 (3) The authority shall make the adopted project area plan available to the general
- 230 public at its offices during normal business hours.

Section 10. Section **63H-1-404** is enacted to read:

63H-1-404. Land use laws not applicable.

The authority is not subject to:

- 234 (1) Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act;
- 235 (2) Title 17, Chapter 27a, County Land Use, Development, and Management Act; or
- 236 (3) the land use ordinances or regulations of a county or municipality.

Section 11. Section **63H-1-501** is enacted to read:

Part 5. Tax Increment

63H-1-501. Authority receipt and use of tax increment -- Distribution of tax increment.

- 241 (1) The authority may receive and use up to 75% of tax increment for up to 25 years, as
- 242 provided in this part.
- 243 (2) Each county that collects property tax on property within a project area shall pay
- 244 and distribute to the agency the tax increment that the agency is entitled to collect under this
- 245 title, in the manner and at the time provided in Section 59-2-1365.

Section 12. Section **63H-1-502** is enacted to read:

63H-1-502. Allowable uses of tax increment.

- 248 (1) The authority may use tax increment:
- 249 (a) for any of the purposes for which the use of tax increment is authorized under this
- 250 chapter;
- 251 (b) for administrative, overhead, legal, and other operating expenses of the authority;
- 252 (c) to pay for, including financing or refinancing, all or part of the development of
- 253 military land;

254 (d) to pay the cost of the installation and construction of any publicly owned building,
255 facility, structure, landscaping, or other improvement within the project area from which the
256 tax increment funds were collected;

257 (e) to pay the cost of the installation of infrastructure and improvements outside the
258 project area from which the tax increment funds were collected if the authority board
259 determines by resolution that the infrastructure and improvements are of benefit to the project
260 area; and

261 (f) to pay the principal of and interest on bonds issued by the authority.

262 (2) The determination of the authority board under Subsection (1)(e) regarding benefit
263 to the project area shall be final and conclusive.

264 Section 13. Section **63H-1-601** is enacted to read:

265 **Part 6. Authority Bonds**

266 **63H-1-601. Resolution authorizing issuance of authority bonds -- Characteristics**
267 **of bonds.**

268 (1) The authority may not issue bonds under this part unless the authority board first
269 adopts a resolution authorizing their issuance.

270 (2) (a) As provided in the authority resolution authorizing the issuance of bonds under
271 this part or the trust indenture under which the bonds are issued, bonds issued under this part
272 may be issued in one or more series and may be sold at public or private sale and in the manner
273 provided in the resolution or indenture.

274 (b) Bonds issued under this part shall bear the date, be payable at the time, bear interest
275 at the rate, be in the denomination and in the form, carry the conversion or registration
276 privileges, have the rank or priority, be executed in the manner, be subject to the terms of
277 redemption or tender, with or without premium, be payable in the medium of payment and at
278 the place, and have other characteristics as provided in the authority resolution authorizing
279 their issuance or the trust indenture under which they are issued.

280 Section 14. Section **63H-1-602** is enacted to read:

281 **63H-1-602. Sources from which bonds may be made payable -- Authority powers**

282 regarding bonds.

283 (1) The principal and interest on bonds issued by the authority may be made payable
284 from:

285 (a) the income and revenues of the projects financed with the proceeds of the bonds;

286 (b) the income and revenues of certain designated projects whether or not they were
287 financed in whole or in part with the proceeds of the bonds;

288 (c) the income, proceeds, revenues, property, and funds the authority derives from or
289 holds in connection with its undertaking and carrying out development of military land;

290 (d) tax increment funds;

291 (e) authority revenues generally;

292 (f) a contribution, loan, grant, or other financial assistance from the federal government
293 or a public entity in aid of the development of military land; or

294 (g) funds derived from any combination of the methods listed in Subsections (1)(a)
295 through (f).

296 (2) In connection with the issuance of authority bonds, the authority may:

297 (a) pledge all or any part of its gross or net rents, fees, or revenues to which its right
298 then exists or may thereafter come into existence;

299 (b) encumber by mortgage, deed of trust, or otherwise all or any part of its real or
300 personal property, then owned or thereafter acquired; and

301 (c) make the covenants and take the action that may be necessary, convenient, or
302 desirable to secure its bonds, or, except as otherwise provided in this chapter, that will tend to
303 make the bonds more marketable, even though such covenants or actions are not specifically
304 enumerated in this chapter.

305 Section 15. Section **63H-1-603** is enacted to read:

306 **63H-1-603. Authority to purchase agency bonds.**

307 (1) Any person, firm, corporation, association, political subdivision of the state, or
308 other entity or public or private officer may purchase bonds issued by an authority under this
309 part with funds owned or controlled by the purchaser.

310 (2) Nothing in this section may be construed to relieve a purchaser of authority bonds
311 of any duty to exercise reasonable care in selecting securities.

312 Section 16. Section **63H-1-604** is enacted to read:

313 **63H-1-604. Those executing bonds not personally liable -- Limitation of**
314 **obligations under bonds -- Negotiability.**

315 (1) A member of the authority board or other person executing an authority bond is not
316 liable personally on the bond.

317 (2) (a) A bond issued by the authority is not a general obligation or liability of the state
318 or any of its political subdivisions and does not constitute a charge against their general credit
319 or taxing powers.

320 (b) A bond issued by the authority is not payable out of any funds or properties other
321 than those of the authority.

322 (c) The community, the state, and its political subdivisions may not be liable on a bond
323 issued by the authority.

324 (d) A bond issued by the authority does not constitute indebtedness within the meaning
325 of any constitutional or statutory debt limitation.

326 (3) A bond issued by the authority under this part is fully negotiable.

327 Section 17. Section **63H-1-605** is enacted to read:

328 **63H-1-605. Obligee rights -- Board may confer other rights.**

329 (1) In addition to all other rights that are conferred on an obligee of a bond issued by
330 the authority under this part and subject to contractual restrictions binding on the obligee, an
331 obligee may:

332 (a) by mandamus, suit, action, or other proceeding, compel an authority and its board,
333 officers, agents, or employees to perform every term, provision, and covenant contained in any
334 contract of the authority with or for the benefit of the obligee, and require the authority to carry
335 out the covenants and agreements of the authority and to fulfill all duties imposed on the
336 authority by this part; and

337 (b) by suit, action, or proceeding in equity, enjoin any acts or things that may be

338 unlawful or violate the rights of the obligee.

339 (2) (a) In a board resolution authorizing the issuance of bonds or in a trust indenture,
 340 mortgage, lease, or other contract, an authority board may confer upon an obligee holding or
 341 representing a specified amount in bonds, the rights described in Subsection (2)(b), to accrue
 342 upon the happening of an event or default prescribed in the resolution, indenture, mortgage,
 343 lease, or other contract, and to be exercised by suit, action, or proceeding in any court of
 344 competent jurisdiction.

345 (b) (i) The rights that the board may confer under Subsection (2)(a) are the rights to:

346 (A) cause possession of all or part of a development project to be surrendered to an
 347 obligee;

348 (B) obtain the appointment of a receiver of all or part of an authority's development
 349 project and of the rents and profits from it; and

350 (C) require the authority and its board and employees to account as if the authority and
 351 the board and employees were the trustees of an express trust.

352 (ii) If a receiver is appointed through the exercise of a right granted under Subsection
 353 (2)(b)(i)(B), the receiver:

354 (A) may enter and take possession of the development project or any part of it, operate
 355 and maintain it, and collect and receive all fees, rents, revenues, or other charges arising from it
 356 after the receiver's appointment; and

357 (B) shall keep money collected as receiver for the authority in separate accounts and
 358 apply it pursuant to the authority obligations as the court directs.

359 Section 18. Section **63H-1-606** is enacted to read:

360 **63H-1-606. Bonds exempt from taxes -- Authority may purchase its own bonds.**

361 (1) A bond issued by the authority under this part is issued for an essential public and
 362 governmental purpose and is, together with interest on the bond and income from it, exempt
 363 from all state taxes except the corporate franchise tax.

364 (2) The authority may purchase its own bonds at a price that its board determines.

365 (3) Nothing in this section may be construed to limit the right of an obligee to pursue a

366 remedy for the enforcement of a pledge or lien given under this part by the authority on its
367 rents, fees, grants, properties, or revenues.

368 Section 19. Section **63H-1-701** is enacted to read:

369 **Part 7. Authority Budget and Reports**

370 **63H-1-701. Annual authority budget -- Fiscal year -- Public hearing required --**
371 **Auditor forms -- Requirement to file form.**

372 (1) The authority shall prepare and its board adopt an annual budget of revenues and
373 expenditures for the authority for each fiscal year.

374 (2) Each annual authority budget shall be adopted before June 22.

375 (3) The authority's fiscal year shall be the period from July 1 to the following June 30.

376 (4) (a) Before adopting an annual budget, the authority board shall hold a public
377 hearing on the annual budget.

378 (b) The authority shall provide notice of the public hearing on the annual budget by:

379 (i) publishing at least one notice in a newspaper of general circulation within the
380 authority boundaries, one week before the public hearing; or

381 (ii) if there is no newspaper of general circulation within the authority boundaries,
382 posting a notice of the public hearing in at least three public places within the authority
383 boundaries.

384 (c) The authority shall make the annual budget available for public inspection at least
385 three days before the date of the public hearing.

386 (5) The state auditor shall prescribe the budget forms and the categories to be contained
387 in each authority budget, including:

388 (a) revenues and expenditures for the budget year;

389 (b) legal fees; and

390 (c) administrative costs, including rent, supplies, and other materials, and salaries of
391 authority personnel.

392 (6) (a) Within 30 days after adopting an annual budget, the authority board shall file a
393 copy of the annual budget with the auditor of the county in which the authority is located, the

394 State Tax Commission, the state auditor, the State Board of Education, and each taxing entity
395 that levies a tax on property from which the authority collects tax increment.

396 (b) The requirement of Subsection (6)(a) to file a copy of the annual budget with the
397 state as a taxing entity is met if the authority files a copy with the State Tax Commission and
398 the state auditor.

399 Section 20. Section **63H-1-702** is enacted to read:

400 **63H-1-702. Amending the authority annual budget.**

401 (1) The authority board may by resolution amend an annual authority budget.

402 (2) An amendment of the annual authority budget that would increase the total
403 expenditures may be made only after public hearing by notice published as required for initial
404 adoption of the annual budget.

405 (3) The authority may not make expenditures in excess of the total expenditures
406 established in the annual budget as it is adopted or amended.

407 Section 21. Section **63H-1-703** is enacted to read:

408 **63H-1-703. Authority report.**

409 (1) (a) On or before November 1 of each year, the authority shall prepare and file a
410 report with the county auditor, the State Tax Commission, the State Board of Education, and
411 each taxing entity that levies a tax on property from which the authority collects tax increment.

412 (b) The requirement of Subsection (1)(a) to file a copy of the report with the state as a
413 taxing entity is met if the authority files a copy with the State Tax Commission and the state
414 auditor.

415 (2) Each report under Subsection (1) shall contain:

416 (a) an estimate of the tax increment to be paid to the authority for the calendar year
417 ending December 31; and

418 (b) an estimate of the tax increment to be paid to the authority for the calendar year
419 beginning the next January 1.

420 Section 22. Section **63H-1-704** is enacted to read:

421 **63H-1-704. Audit requirements.**

422 The authority shall comply with the audit requirements of Title 51, Chapter 2a,
423 Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local
424 Entities Act.

425 Section 23. Section **63H-1-705** is enacted to read:

426 **63H-1-705. Audit report.**

427 (1) The authority shall, within 180 days after the end of the authority's fiscal year, file a
428 copy of the audit report with the county auditor, the State Tax Commission, the State Board of
429 Education, and each taxing entity that levies a tax on property from which the authority collects
430 tax increment.

431 (2) Each audit report under Subsection (1) shall include:

432 (a) the tax increment collected by the authority for each project area;

433 (b) the outstanding principal amount of bonds issued or other loans incurred to finance
434 the costs associated with the authority's project areas; and

435 (c) the actual amount expended for:

436 (i) acquisition of property;

437 (ii) site improvements or site preparation costs;

438 (iii) installation of public utilities or other public improvements; and

439 (iv) administrative costs of the authority.

440 Section 24. Section **63H-1-801** is enacted to read:

441 **Part 8. Authority Dissolution**

442 **63H-1-801. Dissolution of authority -- Restrictions -- Filing copy of ordinance --**
443 **Authority records -- Dissolution expenses.**

444 (1) The authority may not be dissolved unless the authority has no outstanding bonded
445 indebtedness, other unpaid loans, indebtedness, or advances, and no legally binding contractual
446 obligations with persons or entities other than the state.

447 (2) Upon the dissolution of the authority, the Governor's Office of Economic
448 Development shall publish a notice of dissolution in a newspaper of general circulation in the
449 county in which the dissolved authority is located.

450 (3) The books, documents, records, papers, and seal of each dissolved authority shall
451 be deposited for safekeeping and reference with the state auditor.

452 (4) The authority shall pay all expenses of the deactivation and dissolution.

453 Section 25. **Effective date.**

454 If approved by two-thirds of all the members elected to each house, this bill takes effect
455 upon approval by the governor, or the day following the constitutional time limit of Utah
456 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
457 the date of veto override.