

1                   **UTAH INDUSTRIAL FACILITIES AND DEVELOPMENT**

2                                   **ACT AMENDMENTS**

3                                   2013 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Derek E. Brown**

6                                   Senate Sponsor: Kevin T. Van Tassell

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill modifies the Utah Industrial Facilities and Development Act by adding energy  
11 related upgrades to qualified projects for economic growth.

12                   **Highlighted Provisions:**

13                   This bill:

- 14                   ▶ defines terms;
- 15                   ▶ provides that an energy efficiency upgrade project and renewable energy system

16 project are included as projects under the Utah Industrial Facilities and  
17 Development Act;

18                   ▶ allows bond proceeds to be used to pay for or to reimburse a user as well as a lender  
19 for the costs of a project; and

- 20                   ▶ makes technical changes.

21                   **Money Appropriated in this Bill:**

22                   None

23                   **Other Special Clauses:**

24                   None

25                   **Utah Code Sections Affected:**

26                   AMENDS:

27                   **11-17-2**, as last amended by Laws of Utah 2010, Chapter 378

28                   **11-17-3**, as last amended by Laws of Utah 2008, Chapter 360

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

31 Section 1. Section **11-17-2** is amended to read:

32 **11-17-2. Definitions.**

33 As used in this chapter:

34 (1) "Bonds" means bonds, notes, or other evidences of indebtedness.

35 (2) "Energy efficiency upgrade" means an improvement that is permanently affixed to  
36 real property and that is designed to reduce energy consumption, including:

37 (a) insulation in:

38 (i) a wall, ceiling, roof, floor, or foundation; or

39 (ii) a heating or cooling distribution system;

40 (b) an insulated window or door, including:

41 (i) a storm window or door;

42 (ii) a multiglazed window or door;

43 (iii) a heat-absorbing window or door;

44 (iv) a heat-reflective glazed and coated window or door;

45 (v) additional window or door glazing;

46 (vi) a window or door with reduced glass area; or

47 (vii) other window or door modifications that reduce energy loss;

48 (c) an automatic energy control system;

49 (d) in a building or a central plant, a heating, ventilation, or air conditioning and  
50 distribution system;

51 (e) caulking or weatherstripping;

52 (f) a light fixture that does not increase the overall illumination of a building unless an  
53 increase is necessary to conform with the applicable building code;

54 (g) an energy recovery system;

55 (h) a daylighting system;

56 (i) measures to reduce the consumption of water, through conservation or more  
57 efficient use of water, including:

- 58            (i) installation of a low-flow toilet or showerhead;
- 59            (ii) installation of a timer or timing system for a hot water heater; or
- 60            (iii) installation of a rain catchment system; or
- 61            (j) any other modified, installed, or remodeled fixture that is approved as a utility
- 62 cost-savings measure by the governing body.

63            [~~(2)~~] (3) "Finance" or "financing" includes the issuing of bonds by a municipality,  
 64 county, or state university for the purpose of using a portion, or all or substantially all of the  
 65 proceeds to pay for or to reimburse the user [~~or its~~], lender, or the user or lender's designee for  
 66 the costs of the acquisition of facilities of a project, or to create funds for the project itself  
 67 where appropriate, whether these costs are incurred by the municipality, the county, the state  
 68 university, the user, or a designee of the user. If title to or in these facilities at all times remains  
 69 in the user, the bonds of the municipality or county shall be secured by a pledge of one or more  
 70 notes, debentures, bonds, other secured or unsecured debt obligations of the user or lender, or  
 71 [~~such~~] the sinking fund or other arrangement as in the judgment of the governing body is  
 72 appropriate for the purpose of assuring repayment of the bond obligations to investors in  
 73 accordance with their terms.

74            [~~(3)~~] (4) "Governing body" means:

- 75            (a) for a county, city, or town, the legislative body of the county, city, or town;
- 76            (b) for the military installation development authority created in Section 63H-1-201,
- 77 the authority board, as defined in Section 63H-1-102;

78            (c) for [~~the University of Utah and Utah State University~~] a state university except as  
 79 provided in Subsection (4)(d), the board or body having the control and supervision of the  
 80 [~~University of Utah and Utah State University~~] state university; and

81            (d) for a nonprofit corporation or foundation created by and operating under the  
 82 auspices of a state university, the board of directors or board of trustees of that corporation or  
 83 foundation.

84            [~~(4)~~] (5) (a) "Industrial park" means land, including all necessary rights, appurtenances,  
 85 easements, and franchises relating to it, acquired and developed by [~~any~~] a municipality,

86 county, or state university for the establishment and location of a series of sites for plants and  
87 other buildings for industrial, distribution, and wholesale use. [~~There may be included as part~~  
88 ~~of~~]

89 (b) "Industrial park" includes the development of the land for [any] an industrial park  
90 under this chapter or the acquisition and provision of water, sewerage, drainage, street, road,  
91 sidewalk, curb, gutter, street lighting, electrical distribution, railroad, or docking facilities, or  
92 any combination of them, but only to the extent that these facilities are incidental to the use of  
93 the land as an industrial park.

94 (6) "Lender" means a trust company, savings bank, savings and loan association, bank,  
95 credit union, or any other lending institution that lends, loans, or leases proceeds of a financing  
96 to the user or a user's designee.

97 [~~(5)~~] (7) "Mortgage" means a mortgage, trust deed, or other security device.

98 [~~(6)~~] (8) "Municipality" means any incorporated city or town in the state, including  
99 cities or towns operating under home rule charters.

100 [~~(7)~~] (9) "Pollution" means any form of environmental pollution including water  
101 pollution, air pollution, pollution caused by solid waste disposal, thermal pollution, radiation  
102 contamination, or noise pollution.

103 [~~(8)~~] (10) (a) "Project" means:

104 [~~(a)~~] (i) [~~any~~] an industrial park, land, interest in land, building, structure, facility,  
105 system, fixture, improvement, appurtenance, machinery, equipment, or any combination of  
106 them, whether or not in existence or under construction:

107 [~~(i)~~] (A) that is suitable for industrial, manufacturing, warehousing, research, business,  
108 and professional office building facilities, commercial, shopping services, food, lodging, low  
109 income rental housing, recreational, or any other business purposes;

110 [~~(ii)~~] (B) that is suitable to provide services to the general public;

111 [~~(iii)~~] (C) that is suitable for use by any corporation, person, or entity engaged in health  
112 care services, including hospitals, nursing homes, extended care facilities, facilities for the care  
113 of persons with a physical or mental disability, and administrative and support facilities; or

114           ~~[(iv)] (D)~~ that is suitable for use by a state university for the purpose of aiding in the  
115 accomplishment of its authorized academic, scientific, engineering, technical, and economic  
116 development functions~~[, but "project" does not include any property, real, personal, or mixed,~~  
117 ~~for the purpose of the construction, reconstruction, improvement, or maintenance of a public~~  
118 ~~utility as defined in Section 54-2-1, and except as provided in Subsection (8)(b)];~~

119           ~~[(b)] (ii)~~ any land, interest in land, building, structure, facility, system, fixture,  
120 improvement, appurtenance, machinery, equipment, or any combination of them, used by any  
121 individual, partnership, firm, company, corporation, public utility, association, trust, estate,  
122 political subdivision, state agency, or any other legal entity, or its legal representative, agent, or  
123 assigns, for the reduction, abatement, or prevention of pollution, including the removal or  
124 treatment of any substance in process material, if that material would cause pollution if used  
125 without the removal or treatment;

126           (iii) an energy efficiency upgrade;

127           (iv) a renewable energy system;

128           ~~[(c)] (v)~~ facilities, machinery, or equipment, the manufacturing and financing of which  
129 will maintain or enlarge domestic or foreign markets for Utah industrial products; or

130           ~~[(d)] (vi)~~ any economic development or new venture investment fund to be raised other  
131 than from:

132           ~~[(i)] (A)~~ municipal or county general fund money;

133           ~~[(ii)] (B)~~ money raised under the taxing power of any county or municipality; or

134           ~~[(iii)] (C)~~ money raised against the general credit of any county or municipality.

135           (b) "Project" does not include any property, real, personal, or mixed, for the purpose of  
136 the construction, reconstruction, improvement, or maintenance of a public utility as defined in  
137 Section 54-2-1.

138           (11) "Renewable energy system" means a product, system, device, or interacting group  
139 of devices that is permanently affixed to real property and that produces energy from renewable  
140 resources, including:

141           (a) a photovoltaic system;

- 142           (b) a solar thermal system;
- 143           (c) a wind system;
- 144           (d) a geothermal system, including:
- 145           (i) a direct-use system; or
- 146           (ii) a ground source heat pump system;
- 147           (e) a micro-hydro system; or
- 148           (f) another renewable energy system approved by the governing body.

149           ~~[(9)]~~ (12) "State university" means ~~[the University of Utah and Utah State University]~~  
 150 an institution of higher education as described in Section 53B-2-101 and includes any nonprofit  
 151 corporation or foundation created by and operating under their authority.

152           ~~[(10)]~~ (13) "User" means the person, whether natural or corporate, who will occupy,  
 153 operate, maintain, and employ the facilities of, or manage and administer a project after the  
 154 financing, acquisition, or construction of it, whether as owner, manager, purchaser, lessee, or  
 155 otherwise.

156           Section 2. Section **11-17-3** is amended to read:

157           **11-17-3. Powers of municipalities, counties, and state universities.**

158           (1) ~~[Each]~~ A municipality, county, and state university may:

- 159           (a) finance or acquire, whether by construction, purchase, devise, gift, exchange, or
- 160 lease, or any one or more of those methods, and construct, reconstruct, improve, maintain,
- 161 equip, and furnish or fund one or more projects, ~~[which shall be located]~~ within this state, and
- 162 which shall be located within, or partially within, the municipality or county or within the
- 163 county within which a state university is located, unless an agreement under ~~[the]~~ Title 11,
- 164 Chapter 13, Interlocal Cooperation Act, has been entered into as authorized by Subsection (5),
- 165 except that if a governing body finds, by resolution, that the effects of international trade
- 166 practices have been or will be adverse to Utah manufacturers of industrial products and,
- 167 therefore, it is desirable to finance a project in order to maintain or enlarge domestic or foreign
- 168 markets for Utah industrial products, a project may consist of the financing on behalf of a user
- 169 of the costs of acquiring industrial products manufactured in, and which are to be exported

170 from, the state;

171 (b) finance for, sell, lease, contract the management of, or otherwise dispose of to, any  
172 person, firm, partnership, or corporation, either public or private, including without limitation  
173 any person, firm, partnership, or corporation engaged in business for a profit, any or all of its  
174 projects upon the terms and conditions as the governing body considers advisable and which do  
175 not conflict with this chapter;

176 (c) issue revenue bonds for the purpose of defraying the cost of financing, acquiring,  
177 constructing, reconstructing, improving, maintaining, equipping, furnishing, or funding any  
178 project and secure the payment of the bonds as provided in this chapter, which revenue bonds  
179 may be issued in one or more series or issues where considered advisable, and each series or  
180 issue may contain different maturity dates, interest rates, priorities on securities available for  
181 guaranteeing payment of them, and other differing terms and conditions considered necessary  
182 and not in conflict with this chapter;

183 (d) (i) grant options to renew any lease with respect to any project and to buy any  
184 project at a price the governing body considers desirable; and

185 (ii) sell and convey any real or personal property acquired under Subsection (1)(a) at  
186 public or private sale, and make an order respecting the sale considered conducive to the best  
187 interests of the municipality, county, or state university, the sale or conveyance to be subject to  
188 the terms of any lease but to be free and clear of any other encumbrance;

189 (e) establish, acquire, develop, maintain, and operate industrial parks; and

190 (f) offer to the holders of its bonds issued ~~[pursuant to]~~ under this chapter the right,  
191 where its governing body considers it appropriate, to convert the bonds or some portion of the  
192 bond obligation into an equity position in some or all of the assets developed with the proceeds  
193 of the bond offering.

194 (2) (a) An economic development or new venture investment fund ~~[shall be]~~ is  
195 considered to be located in the municipality or county where its headquarters is located or  
196 where any office of it is located, ~~[as long as]~~ if it is headquartered within the state. ~~[It]~~

197 (b) An economic development or new venture investment fund need not make all of its

198 investments within the state or ~~[such]~~ the county or municipality, ~~[so long as it]~~ if it:

199       (i) locates within the state, ~~[or such]~~ the county, or the municipality its headquarters  
200 where its actual investment decisions and management functions occur ~~[and agrees to, and~~  
201 ~~does, limit]; and~~

202       (ii) limits the aggregate amount of its investments in companies located outside the  
203 state to an amount which in the aggregate does not exceed the aggregate amount of investments  
204 made by institutions and funds located outside the state in companies headquartered in Utah  
205 which the locally managed fund has sponsored or in which it has invested and which it has  
206 brought to the attention of investors outside the state.

207       (c) (i) For purposes of enabling an offering of bonds to fund ~~[such]~~ a fund described in  
208 this Subsection (2), a certification of an executive managerial officer of the manager of ~~[said]~~  
209 the fund of the intention to comply with this provision may be relied upon. ~~[Each]~~

210       (ii) A fund shall at least annually certify to the governmental offeror of ~~[such]~~ the  
211 bonds its compliance with this provision.

212       (3) (a) Before any municipality, county, or state university issues revenue bonds under  
213 this chapter for the purpose of defraying the cost of acquiring, constructing, reconstructing,  
214 improving, maintaining, equipping, or furnishing any industrial park project, the governing  
215 body of the state university, county, or municipality shall:

216       (i) adopt and establish a plan of development for the tracts of land to constitute the  
217 industrial park ~~[and shall]; and~~

218       (ii) by resolution, find:

219       (A) that the project for the establishment of the industrial park is well conceived and  
220 has a reasonable prospect of success, and that the project will tend to provide proper economic  
221 development of the municipality or county and will encourage industry to locate within or near  
222 the municipality or county; ~~or[;]~~

223       (B) in the case of state universities, will further, through industrial research and  
224 development, the instructional progress of the state university.

225       (b) There may be included as a part of any plan of development for any industrial park:



226 (i) zoning regulations, including:  
 227 (A) restrictions on usage of sites within the boundaries of the industrial park[;];  
 228 (B) minimum size of sites[;]; and  
 229 (C) parking and loading regulations[;]; and  
 230 (ii) methods for the providing and furnishing of police and fire protection and for the  
 231 furnishing of other municipal or county services which are considered necessary in order to  
 232 provide for the maintenance of the public health and safety.

233 (c) If any water or sewerage facilities are to be acquired as part of the development of  
 234 the land for an industrial park under this chapter, water and sewerage facilities may be acquired  
 235 as part of the issue of bonds issued under this chapter, through the issuance of bonds payable  
 236 from water and sewer charges [~~in the manner as is now or as may hereafter be~~] as provided by  
 237 law, in combination with an issue of refunding bonds, in combination with an issue of bonds  
 238 upon the consent of the holders of outstanding bonds issued for the same purpose, in  
 239 combination with bonds issued for the purposes of financing water and sewer facilities which  
 240 will not be a part of an industrial park, or in any combination of the foregoing. [~~Any~~]

241 (d) (i) A municipality, county, or state university establishing an industrial park may  
 242 lease any land acquired and developed as part of an industrial park to one or more lessees.

243 (ii) The lessee may sublease all or a portion of the land so leased from the municipality  
 244 or county. [~~Municipalities, counties, and state universities~~]

245 (iii) A municipality, county, or state university may sell or lease land in connection  
 246 with the establishment, acquisition, development, maintenance, and operation of an industrial  
 247 park project. [~~Any such~~]

248 (iv) A lease or sale of land shall be undertaken only after the adoption by the governing  
 249 body of a resolution authorizing the lease or sale of the land for industrial park purposes.

250 (4) (a) (i) [~~No~~] A municipality, county, or state university may not:

251 (A) operate any project [~~referred to in~~] under this section, as a business or in any other  
 252 manner, except as the lessor or administrator of it[~~, nor may it~~]; or

253 (B) acquire any [~~such~~] project, or any part of it, by condemnation. [~~This prohibition~~]

254 does]

255 (ii) The provisions of Subsection (4)(a)(i) do not apply to projects involving research  
256 conducted, administered, or managed by a state university.

257 (b) ~~[No]~~ Except for a project described in Subsection 11-17-2(10)(a)(ii) or (vi), a  
258 municipality, county, or state university may not, under this chapter, acquire or lease projects,  
259 or issue revenue bonds for the purpose of defraying the cost of any project or part of it, used for  
260 the generation, transmission, or distribution of electric energy beyond the project site, or the  
261 production, transmission, or distribution of natural gas~~[, except for any project defined in~~  
262 ~~Subsection 11-17-2(8)(b) or (d)].~~

263 (5) (a) ~~[Each]~~ A municipality, county, ~~[and]~~ or state university may enter, either before  
264 or after the bonds have been issued, into interlocal agreements under Title 11, Chapter 13,  
265 Interlocal Cooperation Act, with one or more municipalities, counties, state universities, or  
266 special service districts created ~~[pursuant to]~~ under Title 17D, Chapter 1, Special Service  
267 District Act, in order to accomplish economies of scale or other cost savings and any other  
268 additional purposes to be specified in the interlocal agreement, for the issuance of bonds under  
269 this chapter on behalf of all of the signatories to the interlocal agreement by one of the  
270 municipalities, counties, or state universities which is a signatory to the interlocal agreement  
271 for the financing or acquisition of projects qualifying as a project ~~[under Subsection~~  
272 ~~11-17-2(8)].~~

273 (b) For all purposes of Section 11-13-207 the signatory to the interlocal agreement  
274 designated as the issuer of the bonds constitutes the administrator of the interlocal agreement.

275 (6) ~~[Subsection (4) to the contrary notwithstanding]~~ Notwithstanding the provisions of  
276 Subsection (4), the governing body of any state university owning or desiring to own facilities  
277 or administer projects ~~[described in Subsection 11-17-2(8)]~~ may:

278 (a) become a signatory to the interlocal agreement ~~[provided for in]~~ under Subsection  
279 (5);

280 (b) enter into a separate security agreement with the issuer of the bonds, as provided in  
281 Section 11-17-5 for the financing or acquisition of a project ~~[under Subsection 11-17-2(8)]~~ to

282 be owned by the state university;

283 (c) enter into agreements to secure the obligations of the state university under a  
284 security agreement entered into under Subsection (6)(b), or to provide liquidity for ~~[such]~~ the  
285 obligations including, without limitation, letter of credit agreements with banking institutions  
286 for letters of credit or for standby letters of credit, reimbursement agreements with financial  
287 institutions, line of credit agreements, standby bond purchase agreements, and to provide for  
288 payment of fees, charges, and other amounts coming due under the agreements entered into  
289 under the authority contained in this Subsection (6)(c);

290 (d) provide in security agreements entered into under Subsection (6)(b) and in  
291 agreements entered into under Subsection (6)(c) that the obligations of the state university  
292 under an agreement shall be special obligations payable solely from the revenues derived from  
293 the operation or management of the project, owned by the state university and from net profits  
294 from proprietary activities and any other revenues pledged other than appropriations by the  
295 Utah Legislature, and the governing body of the state university shall pledge all or any part of  
296 ~~[such]~~ the revenues to the payment of its obligations under an agreement; and

297 (e) in order to secure the prompt payment of the obligations of the state university  
298 under a security agreement entered into under Subsection (6)(b) or an agreement entered into  
299 under Subsection (6)(c) and the proper application of the revenues pledged to them, covenant  
300 and provide appropriate provisions in an agreement to the extent ~~[permitted and provided for]~~  
301 allowed under Section 53B-21-102.

302 (7) ~~[Subsection (4) to the contrary notwithstanding]~~ Notwithstanding the provisions of  
303 Subsection (4), the governing body of any municipality, county, or special service district  
304 owning, desiring to own, or administering projects or facilities ~~[described in Subsection~~  
305 ~~11-17-2(8)]~~ may:

306 (a) become a signatory to the interlocal agreement provided ~~[for]~~ in Subsection (5);

307 (b) enter into a separate security agreement with the issuer of the bonds, as provided in  
308 Section 11-17-5, for the financing or acquisition of a project ~~[under Subsection 11-17-2(8)]~~ to  
309 be owned by the municipality, county, or special service district, ~~[as the case may be,]~~ except

310 that no municipality, county, or special service district may mortgage the facilities [so]  
311 financed or acquired;

312 (c) enter into agreements to secure the obligations of the municipality, county, or  
313 special service district, as the case may be, under a security agreement entered into under  
314 Subsection (7)(b), or to provide liquidity for [such] the obligations including, without  
315 limitation, letter of credit agreements with banking institutions for letters of credit or for  
316 standby letters of credit, reimbursement agreements with financial institutions, line of credit  
317 agreements, standby bond purchase agreements, and to provide for payment of fees, charges,  
318 and other amounts coming due under the agreements entered into under the authority contained  
319 in this Subsection (7)(c);

320 (d) provide in security agreements entered into under Subsection (7)(b) and in  
321 agreements entered into under Subsection (7)(c) that the obligations of the municipality,  
322 county, or special service district, as the case may be, under an agreement shall be special  
323 obligations payable solely from the revenues derived from the operation or management of the  
324 project, owned by the municipality, county, or special service district[~~as the case may be,~~] and  
325 the governing body of the municipality, county, or special service district[~~as the case may be,~~]  
326 shall pledge all or any part of [such] the revenues to the payment of its obligations under an  
327 agreement; and

328 (e) in order to secure the prompt payment of obligations under a security agreement  
329 entered into under Subsection (7)(b) or an agreement entered into under Subsection (7)(c) and  
330 the proper application of the revenues pledged to them, covenant and provide appropriate  
331 provisions in an agreement to the extent permitted and provided for with respect to revenue  
332 obligations under Section 11-14-306.

333 (8) In connection with the issuance of bonds under this chapter, a municipality, county,  
334 or state university may:

335 (a) [~~may~~] provide for the repurchase of bonds tendered by their owners and may enter  
336 into an agreement to provide liquidity for [such] the repurchases, including a letter of credit  
337 agreement, line of credit agreement, standby bond purchase agreement, or other type of

338 liquidity agreement;

339           (b) [~~may~~] enter into remarketing, indexing, tender agent, or other agreements incident  
340 to the financing of the project or the performance of the issuer's obligations relative to the  
341 bonds; and

342           (c) [~~may~~] provide for payment of fees, charges, and other amounts coming due under  
343 the agreements entered into [~~pursuant to authority contained in~~] under Subsection (6).