

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

7

LONG TITLE

8 **General Description:**

9
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



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, the board or body having the
 79 control and supervision of the University of Utah and Utah State University; and
 80 (d) for a nonprofit corporation or foundation created by and operating under the
 81 auspices of a state university, the board of directors or board of trustees of that corporation or
 82 foundation.

83 [~~(4)~~] (5) (a) "Industrial park" means land, including all necessary rights, appurtenances,
 84 easements, and franchises relating to it, acquired and developed by [~~any~~] a municipality,
 85 county, or state university for the establishment and location of a series of sites for plants and
 86 other buildings for industrial, distribution, and wholesale use. [~~There may be included as part~~
 87 ~~of~~]

88 (b) "Industrial park" includes the development of the land for [~~any~~] an industrial park
 89 under this chapter or the acquisition and provision of water, sewerage, drainage, street, road,

90 sidewalk, curb, gutter, street lighting, electrical distribution, railroad, or docking facilities, or
 91 any combination of them, but only to the extent that these facilities are incidental to the use of
 92 the land as an industrial park.

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

96 ~~[(5)]~~ (7) "Mortgage" means a mortgage, trust deed, or other security device.

97 ~~[(6)]~~ (8) "Municipality" means any incorporated city or town in the state, including
 98 cities or towns operating under home rule charters.

99 ~~[(7)]~~ (9) "Pollution" means any form of environmental pollution including water
 100 pollution, air pollution, pollution caused by solid waste disposal, thermal pollution, radiation
 101 contamination, or noise pollution.

102 ~~[(8)]~~ (10) (a) "Project" means:

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

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

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

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

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

118 ~~[(b)]~~ (ii) any land, interest in land, building, structure, facility, system, fixture,
 119 improvement, appurtenance, machinery, equipment, or any combination of them, used by any
 120 individual, partnership, firm, company, corporation, public utility, association, trust, estate,

121 political subdivision, state agency, or any other legal entity, or its legal representative, agent, or
 122 assigns, for the reduction, abatement, or prevention of pollution, including the removal or
 123 treatment of any substance in process material, if that material would cause pollution if used
 124 without the removal or treatment;

125 (iii) an energy efficiency upgrade;

126 (iv) a renewable energy system;

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

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

131 ~~(A)~~ (A) municipal or county general fund money;

132 ~~(B)~~ (B) money raised under the taxing power of any county or municipality; or

133 ~~(C)~~ (C) money raised against the general credit of any county or municipality.

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

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

140 (a) a photovoltaic system;

141 (b) a solar thermal system;

142 (c) a wind system;

143 (d) a geothermal system, including:

144 (i) a direct-use system; or

145 (ii) a ground source heat pump system;

146 (e) a micro-hydro system; or

147 (f) another renewable energy system approved by the governing body.

148 ~~(12)~~ (12) "State university" means the University of Utah and Utah State University
 149 and includes any nonprofit corporation or foundation created by and operating under their
 150 authority.

151 ~~(13)~~ (13) "User" means the person, whether natural or corporate, who will occupy,

152 operate, maintain, and employ the facilities of, or manage and administer a project after the
153 financing, acquisition, or construction of it, whether as owner, manager, purchaser, lessee, or
154 otherwise.

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

156 **11-17-3. Powers of municipalities, counties, and state universities.**

157 (1) ~~Each~~ A municipality, county, and state university may:

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

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

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

182 (d) (i) grant options to renew any lease with respect to any project and to buy any

183 project at a price the governing body considers desirable; and

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

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

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

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

196 (b) An economic development or new venture investment fund need not make all of its
197 investments within the state or [~~such~~] the county or municipality, [~~so long as it~~] if it:

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

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

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

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

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

214 body of the state university, county, or municipality shall:

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

217 (ii) by resolution, find:

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

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

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

225 (i) zoning regulations, including:

226 (A) restrictions on usage of sites within the boundaries of the industrial park[;];

227 (B) minimum size of sites[;]; and

228 (C) parking and loading regulations[;]; and

229 (ii) methods for the providing and furnishing of police and fire protection and for the
230 furnishing of other municipal or county services which are considered necessary in order to
231 provide for the maintenance of the public health and safety.

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

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

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

244 (iii) A municipality, county, or state university may sell or lease land in connection

245 with the establishment, acquisition, development, maintenance, and operation of an industrial
246 park project. [~~Any such~~]

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

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

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

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

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

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

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

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

274 (6) [~~Subsection (4) to the contrary notwithstanding~~] Notwithstanding the provisions of
275 Subsection (4), the governing body of any state university owning or desiring to own facilities

276 or administer projects [~~described in Subsection 11-17-2(8)~~] may:

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

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

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

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

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

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

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

306 (b) enter into a separate security agreement with the issuer of the bonds, as provided in

307 Section 11-17-5, for the financing or acquisition of a project [~~under Subsection 11-17-2(8)~~] to
308 be owned by the municipality, county, or special service district, [~~as the case may be,~~] except
309 that no municipality, county, or special service district may mortgage the facilities [~~so~~]
310 financed or acquired;

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

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

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

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

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

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

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

Legislative Review Note
as of 3-4-13 2:33 PM

Office of Legislative Research and General Counsel