

Part 2 Authority Creation and Powers

63H-1-201 Creation of military installation development authority -- Status and powers of authority -- Limitation.

- (1) There is created a military installation development authority.
- (2) The authority is:
 - (a) an independent, nonprofit, separate body corporate and politic, with perpetual succession and statewide jurisdiction, whose purpose is to facilitate the development of land within a project area or on military land associated with a project area;
 - (b) a political subdivision of the state; and
 - (c) a public corporation, as defined in Section 63E-1-102.
- (3) The authority may:
 - (a) facilitate the development of land within one or more project areas, including the ongoing operation of facilities within a project area, or development of military land associated with a project area;
 - (b) sue and be sued;
 - (c) enter into contracts generally;
 - (d) by itself or through a subsidiary, buy, obtain an option upon, or otherwise acquire any interest in real or personal property:
 - (i) in a project area; or
 - (ii) outside a project area for public infrastructure and improvements, if the board considers the purchase, option, or other interest acquisition to be necessary for fulfilling the authority's development objectives;
 - (e) sell, convey, grant, dispose of by gift, or otherwise dispose of any interest in real or personal property;
 - (f) enter into a lease agreement on real or personal property, either as lessee or lessor:
 - (i) in a project area; or
 - (ii) outside a project area, if the board considers the lease to be necessary for fulfilling the authority's development objectives;
 - (g) provide for the development of land within a project area or military land associated with the project area under one or more contracts;
 - (h) exercise powers and perform functions under a contract, as authorized in the contract;
 - (i) exercise exclusive police power within a project area to the same extent as though the authority were a municipality, including the collection of regulatory fees;
 - (j) receive the property tax allocation and other taxes and fees as provided in this chapter;
 - (k) accept financial or other assistance from any public or private source for the authority's activities, powers, and duties, and expend any funds so received for any of the purposes of this chapter;
 - (l) borrow money, contract with, or accept financial or other assistance from the federal government, a public entity, or any other source for any of the purposes of this chapter and comply with any conditions of the loan, contract, or assistance;
 - (m) issue bonds to finance the undertaking of any development objectives of the authority, including bonds under Title 11, Chapter 17, Utah Industrial Facilities and Development Act, and bonds under Title 11, Chapter 42, Assessment Area Act;
 - (n) hire employees, including contract employees;
 - (o) transact other business and exercise all other powers provided for in this chapter;

- (p) enter into a development agreement with a developer of land within a project area;
 - (q) enter into an agreement with a political subdivision of the state under which the political subdivision provides one or more municipal services within a project area;
 - (r) enter into an agreement with a private contractor to provide one or more municipal services within a project area;
 - (s) provide for or finance an energy efficiency upgrade, a renewable energy system, or electric vehicle charging infrastructure as defined in Section 11-42a-102, in accordance with Title 11, Chapter 42a, Commercial Property Assessed Clean Energy Act;
 - (t) exercise powers and perform functions that the authority is authorized by statute to exercise or perform;
 - (u) enter into an agreement with the federal government or an agency of the federal government under which the federal government or agency:
 - (i) provides law enforcement services only to military land within a project area; and
 - (ii) may enter into a mutual aid or other cooperative agreement with a law enforcement agency of the state or a political subdivision of the state;
 - (v) by itself or through a subsidiary, act as a facilitator under Title 63N, Chapter 13, Part 3, Facilitating Public-private Partnerships Act, to provide expertise and knowledge to another governmental entity interested in public-private partnerships;
 - (w) enter into an intergovernmental support agreement under Title 10, U.S.C. Sec. 2679 with the military to provide support services to the military in accordance with the agreement;
 - (x) act as a developer, or assist a developer chosen by the military, to develop military land as part of an enhanced use lease under Title 10, U.S.C. Sec. 2667; and
 - (y) develop public infrastructure and improvements.
- (4) The authority may not itself provide law enforcement service or fire protection service within a project area but may enter into an agreement for one or both of those services, as provided in Subsection (3)(q).
- (5) The authority shall provide support to a subsidiary that enters into an agreement under Subsection (3)(v) that the authority determines necessary for the subsidiary to fulfill the requirements of the agreement.
- (6) Because providing procurement, utility, construction, and other services for use by a military installation, including providing public infrastructure and improvements for use or occupancy by the military, are core functions of the authority and are typically provided by a local government for the local government's own needs or use, these services provided by the authority for the military under this chapter are considered to be for the authority's own needs and use.
- (7) A public infrastructure district created by the authority under Title 17D, Chapter 4, Public Infrastructure District Act, is a subsidiary of the authority.

Amended by Chapter 274, 2022 General Session

63H-1-202 Applicability of other law.

- (1) As used in this section:
 - (a) "Subsidiary" means an authority subsidiary that is a public body as defined in Section 52-4-103.
 - (b) "Subsidiary board" means the governing body of a subsidiary.
- (2) The authority or land within a project area is not subject to:
 - (a) Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act;
 - (b) Title 17, Chapter 27a, County Land Use, Development, and Management Act;

- (c) ordinances or regulations of a county or municipality, including those relating to land use, health, business license, or franchise; or
 - (d) the jurisdiction of a special district under Title 17B, Limited Purpose Local Government Entities - Special Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act.
- (3) The authority is subject to and governed by Sections 63E-2-106, 63E-2-107, 63E-2-108, 63E-2-109, 63E-2-110, and 63E-2-111, but is not otherwise subject to or governed by Title 63E, Independent Entities Code.
- (4)
- (a) The definitions in Section 57-8-3 apply to this Subsection (4).
 - (b) Notwithstanding the provisions of Title 57, Chapter 8, Condominium Ownership Act, or any other provision of law:
 - (i) if the military is the owner of land in a project area on which a condominium project is constructed, the military is not required to sign, execute, or record a declaration of a condominium project; and
 - (ii) if a condominium unit in a project area is owned by the military or owned by the authority and leased to the military for \$1 or less per calendar year, not including any common charges that are reimbursements for actual expenses:
 - (A) the condominium unit is not subject to any liens under Title 57, Chapter 8, Condominium Ownership Act;
 - (B) condominium unit owners within the same building or commercial condominium project may agree on any method of allocation and payment of common area expenses, regardless of the size or par value of each unit; and
 - (C) the condominium project may not be dissolved without the consent of all the condominium unit owners.
- (5) Notwithstanding any other provision, when a law requires the consent of a local government, the authority is the consenting entity for a project area.
- (6)
- (a) A department, division, or other agency of the state and a political subdivision of the state shall cooperate with the authority to the fullest extent possible to provide whatever support, information, or other assistance the authority requests that is reasonably necessary to help the authority fulfill the authority's duties and responsibilities under this chapter.
 - (b) Subsection (6)(a) does not apply to a political subdivision that does not have any of a project area located within the boundary of the political subdivision.
- (7)
- (a) The authority and a subsidiary are subject to Title 52, Chapter 4, Open and Public Meetings Act, except that:
 - (i) notwithstanding Section 52-4-104, the timing and nature of training to authority board members or subsidiary board members on the requirements of Title 52, Chapter 4, Open and Public Meetings Act, may be determined by:
 - (A) the board chair, for the authority board; or
 - (B) the subsidiary board chair, for a subsidiary board;
 - (ii) authority staff may adopt a rule governing the use of electronic meetings under Section 52-4-207, if, under Subsection 63H-1-301(3), the board delegates to authority staff the power to adopt the rule; and
 - (iii) for an electronic meeting of the authority board or subsidiary board that otherwise complies with Section 52-4-207, the authority board or subsidiary board, respectively:
 - (A) is not required to establish an anchor location; and

- (B) may convene and conduct the meeting without the determination otherwise required under Subsection 52-4-207(5)(a)(i).
- (b) Except as provided in Subsection (7)(c), the authority is not required to physically post notice notwithstanding any other provision of law.
- (c) The authority shall physically post notice in accordance with Subsection 52-4-202(3)(a).
- (8) The authority and a subsidiary are subject to Title 63G, Chapter 2, Government Records Access and Management Act, except that:
 - (a) notwithstanding Section 63G-2-701:
 - (i) the authority may establish an appeals board consisting of at least three members;
 - (ii) an appeals board established under Subsection (8)(a)(i) shall include:
 - (A) one of the authority board members appointed by the governor;
 - (B) the authority board member appointed by the president of the Senate; and
 - (C) the authority board member appointed by the speaker of the House of Representatives; and
 - (iii) an appeal of a decision of an appeals board is to district court, as provided in Section 63G-2-404, except that the State Records Committee is not a party; and
 - (b) a record created or retained by the authority or a subsidiary acting in the role of a facilitator under Subsection 63H-1-201(3)(v) is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.
- (9) The authority or a subsidiary acting in the role of a facilitator under Subsection 63H-1-201(3)(v) is not prohibited from receiving a benefit from a public-private partnership that results from the facilitator's work as a facilitator.
- (10)
 - (a)
 - (i) A subsidiary created as a public infrastructure district under Title 17D, Chapter 4, Public Infrastructure District Act, may, subject to limitations of Title 17D, Chapter 4, Public Infrastructure District Act, levy a property tax for the operations and maintenance of the public infrastructure district's financed infrastructure and related improvements, subject to a maximum rate of .015.
 - (ii) A levy under Subsection (10)(a)(i) may be separate from a public infrastructure district property tax levy for a bond.
 - (b) If a subsidiary created as a public infrastructure district issues a bond:
 - (i) the subsidiary may:
 - (A) delay the effective date of the property tax levy for the bond until after the period of capitalized interest payments; and
 - (B) covenant with bondholders not to reduce or impair the property tax levy; and
 - (ii) notwithstanding a provision to the contrary in Title 17D, Chapter 4, Public Infrastructure District Act, the tax rate for the property tax levy for the bond may not exceed a rate that generates more revenue than required to pay the annual debt service of the bond plus administrative costs, subject to a maximum of .02.
 - (c)
 - (i) A subsidiary created as a public infrastructure district under Title 17D, Chapter 4, Public Infrastructure District Act, may create tax areas, as defined in Section 59-2-102, within the public infrastructure district and apply a different property tax rate to each tax area, subject to the maximum rate limitations described in Subsections (10)(a)(i) and (10)(b)(ii).
 - (ii) If a subsidiary created by a public infrastructure district issues bonds, the subsidiary may issue bonds secured by property taxes from:
 - (A) the entire public infrastructure district; or

(B) one or more tax areas within the public infrastructure district.

(11)

(a) Terms defined in Section 57-11-2 apply to this Subsection (11).

(b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act, does not apply to an offer or disposition of an interest in land if the interest in land lies within the boundaries of the project area and the authority:

(i)

(A) has a development review committee using at least one professional planner;

(B) enacts standards and guidelines that require approval of planning, land use, and plats, including the approval of plans for streets, culinary water, sanitary sewer, and flood control; and

(C) will have the improvements described in Subsection (11)(b)(i)(B) plus telecommunications and electricity; and

(ii) if at the time of the offer or disposition, the subdivider furnishes satisfactory assurance of completion of the improvements described in Subsection (11)(b)(i)(C).

(12)

(a) As used in this Subsection (12), "officer" means the same as an officer within the meaning of the Utah Constitution, Article IV, Section 10.

(b) An official act of an officer may not be invalidated for the reason that the officer failed to take the oath of office.

Amended by Chapter 16, 2023 General Session

Amended by Chapter 100, 2023 General Session

Amended by Chapter 435, 2023 General Session

63H-1-203 Levy of a municipal tax -- Direct tax payment to MIDA.

(1) A levy of a municipal energy tax, MIDA energy tax, telecommunications tax, transient room tax, or resort communities tax, including an increase in the applicable tax rate, requires the affirmative vote of:

(a) the authority board; and

(b) a majority of all elected members of the authority board.

(2) If the authority board levies a municipal energy tax, a consumer who acquires taxable energy shall pay the tax directly to the authority on a monthly basis if the consumer's energy supplier is not required under federal law to collect the tax in the manner described in Section 10-1-307.

Amended by Chapter 362, 2013 General Session

63H-1-204 MIDA energy tax.

(1) By ordinance, an authority board may levy a MIDA energy tax, within a project area, on an energy supplier as defined in Section 10-1-303.

(2) The maximum rate of the MIDA energy tax is 6% of the delivered value as defined in Section 10-1-303, except that delivered value does not include the amount of a tax paid under this section.

(3)

(a) An energy supplier may recover an amount equal to the MIDA energy tax from its customers, if the energy supplier includes the amount as a separate billing line item.

(b) The MIDA energy tax levied under this section is in addition to the rate approved by the Public Service Commission and charged to the customer.

- (4) If the authority has levied a municipal energy tax in the project area, the MIDA energy tax paid by a customer is reduced by any municipal energy tax paid by that customer on the same delivered value.
- (5)
 - (a) The MIDA energy tax is payable by the energy supplier to MIDA on a monthly basis as described by the ordinance levying the tax.
 - (b) The ordinance shall allow the energy supplier to retain 1% of the tax remittance each month to offset the energy supplier's costs of collecting and remitting the tax.

Enacted by Chapter 362, 2013 General Session

63H-1-205 MIDA accommodations tax.

- (1) As used in this section:
 - (a) "Accommodations and services" means an accommodation or service described in Subsection 59-12-103(1)(i).
 - (b) "Accommodations and services" does not include amounts paid or charged that are not part of a rental room rate.
- (2) By ordinance, the authority board may impose a MIDA accommodations tax on a provider for amounts paid or charged for accommodations and services, if the place of accommodation is located on:
 - (a) authority-owned or other government-owned property within the project area; or
 - (b) privately owned property on which the authority owns a condominium unit that is part of the place of accommodation.
- (3) The maximum rate of the MIDA accommodations tax is 15% of the amounts paid to or charged by the provider for accommodations and services.
- (4) A provider may recover an amount equal to the MIDA accommodations tax from customers, if the provider includes the amount as a separate billing line item.
- (5) If the authority imposes the tax described in this section, neither the authority nor a public entity may impose, on the amounts paid or charged for accommodations and services, any other tax described in:
 - (a) Title 59, Chapter 12, Sales and Use Tax Act; or
 - (b) Title 59, Chapter 28, State Transient Room Tax Act.
- (6) Except as provided in Subsection (7) or (8), the tax imposed under this section shall be administered, collected, and enforced in accordance with:
 - (a) the same procedures used to administer, collect, and enforce the tax under:
 - (i) Title 59, Chapter 12, Part 1, Tax Collection; or
 - (ii) Title 59, Chapter 12, Part 2, Local Sales and Use Tax Act; and
 - (b) Title 59, Chapter 1, General Taxation Policies.
- (7) The location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.
- (8)
 - (a) A tax under this section is not subject to Section 59-12-107.1 or 59-12-123 or Subsections 59-12-205(2) through (5).
 - (b) The exemptions described in Sections 59-12-104, 59-12-104.1, and 59-12-104.6 do not apply to a tax imposed under this section.
- (9) The State Tax Commission shall:
 - (a) except as provided in Subsection (9)(b), distribute the revenue collected from the tax to the authority; and

- (b) retain and deposit an administrative charge in accordance with Section 59-1-306 from revenue the commission collects from a tax under this section.
- (10)
 - (a) If the authority imposes, repeals, or changes the rate of tax under this section, the implementation, repeal, or change shall take effect:
 - (i) on the first day of a calendar quarter; and
 - (ii) after a 90-day period beginning on the date the State Tax Commission receives the notice described in Subsection (10)(b) from the authority.
 - (b) The notice required in Subsection (10)(a)(ii) shall state:
 - (i) that the authority will impose, repeal, or change the rate of a tax under this section;
 - (ii) the effective date of the implementation, repeal, or change of the tax; and
 - (iii) the rate of the tax.
- (11) In addition to the uses permitted under Section 63H-1-502, the authority may allocate revenue from the MIDA accommodations tax to a county in which a place of accommodation that is subject to the MIDA accommodations tax is located, if:
 - (a) the county had a transient room tax described in Section 59-12-301 in effect at the time the authority board imposed a MIDA accommodations tax by ordinance; and
 - (b) the revenue replaces revenue that the county received from a county transient room tax described in Section 59-12-301 for the county's general operations and administrative expenses.

Amended by Chapter 414, 2021 General Session

63H-1-206 Property exchange -- Freeway interchange construction.

- (1)
 - (a) If the authority receives title to real property from the Secretary of the United States Air Force, pursuant to Section 2831 of the National Defense Authorization Act for Fiscal Year 2020, for construction of an interchange by the Department of Transportation, the authority shall exchange the real property intended for the interchange with the Department of Transportation for any unused remainder of real property that the Department of Transportation does not need for the freeway after the interchange is complete.
 - (b) The authority or a subsidiary of the authority is the designee of the state, within the meaning of Section 2831(a) of the National Defense Authorization Act for Fiscal Year 2020.
- (2) An exchange described in Subsection (1) shall occur at no cost to the authority or the Department of Transportation, regardless of the value of the real property.
- (3)
 - (a) The authority shall demolish the structures on and, as required by the Secretary of the United States Air Force and the Utah Department of Environmental Quality, environmentally mitigate the real property that the authority exchanges with the Department of Transportation under this section.
 - (b) The Department of Transportation shall remove unneeded freeway improvements from the real property that the Department of Transportation exchanges with the authority under this section.
- (4) Upon the authority's receipt of title to real property under this section, the real property automatically becomes included within the project area adjacent to the real property.

Amended by Chapter 282, 2020 General Session

63H-1-207 Authority jurisdiction over Department of Transportation property.

- (1) As used in this section:
 - (a) "Highway land" means land that is:
 - (i) owned by the Department of Transportation, created in Section 72-1-201; and
 - (ii) within an authority project area that was created to provide military recreation facilities and support.
 - (b) "Highway land" does not include:
 - (i) a class A state road that is in active use; and
 - (ii) a shoulder or appurtenance that is contiguous to a class A state road that is in active use.
- (2) Notwithstanding any other provision of statute, the authority has jurisdiction and control over highway land, subject to Subsection (3).
- (3) The executive director of the Department of Transportation may, in consultation with the authority, transfer, sell, trade, or lease the highway land or any interest in the highway land as provided in Section 72-5-111 and any applicable rules and regulations.

Enacted by Chapter 282, 2020 General Session

63H-1-208 Former rail line.

- (1) A former rail line automatically becomes included within a project area located at an air force base if:
 - (a) the authority acquires title to the former rail line as provided in Subsection (2); and
 - (b) a portion of the former rail line is adjacent to the project area.
- (2) Notwithstanding Section 72-5-117, the Department of Transportation may transfer to the authority, at no cost to the authority, title to that portion of a former rail line adjacent to a project area located at an air force base that the Department of Transportation does not need for construction of a freeway interchange.
- (3) The authority may:
 - (a) develop the former rail line; or
 - (b) transfer title of all or part of the former rail line, at no cost, to another governmental entity or nonprofit entity who agrees to receive the title.
- (4) A governmental entity or nonprofit entity that agrees to receive title to all or part of a former rail line under Subsection (3)(b) assumes responsibility for the maintenance of and any construction that remains to be completed on the former rail line.

Amended by Chapter 12, 2023 General Session

63H-1-209 Immunity from contaminated property claims.

- (1) As used in this section:
 - (a) "Agency" means the same as that term is defined in Section 57-25-102.
 - (b) "Claim" means an action, suit, claim, demand, allegation, or cause of action, whether grounded in law or equity, made in a court of competent jurisdiction, mediation, arbitration, before a regulatory body, or in another dispute resolution forum.
 - (c) "Contaminated property" means real property in a project area that is:
 - (i) affected by historical contamination; and
 - (ii) owned by a governmental entity.
 - (d) "Environmental covenant" means the same as that term is defined in Section 57-25-102.
 - (e) "Governmental entity" means the same as that term is defined in Section 63G-7-102.
 - (f) "Hazardous materials" means the same as that term is defined in Section 19-6-302.

- (g) "Hazardous substances" means the same as that term is defined in Section 19-6-302.
 - (h) "Historical contamination" means the placement, disposal, or release of hazardous materials or hazardous substances onto, into, under, or in a way that affects real property, and which placement, disposal, or release of hazardous materials or hazardous substances occurred prior to ownership of the real property by a governmental entity.
 - (i) "Ownership," "own," "owned," "owns," or "acquires" means to have an ownership or other established interest in real property, including holding title to, leasing, operating on, or maintaining real property.
- (2) In addition to the liability protection provided by Subsections 63G-7-201(4)(I) and 63G-7-201(4)(s)(iii) and the other provisions of Title 63G, Chapter 7, Governmental Immunity Act of Utah, the protections of Subsection (3) apply to a governmental entity that owns or approves the use of contaminated property.
- (3)
- (a) Ownership of contaminated property by a governmental entity, or a governmental entity's approval of the use of contaminated property does not subject a governmental entity, its agents, or its officers or employees to any liability for or related to a claim arising from, proximately caused by, or related to historical contamination.
 - (b) No governmental entity waives immunity from suit or liability by this section.
 - (c) A claim made against a governmental entity, its agents, or its officers or employees in violation of this section shall subject the claimant to the payment of double the attorney fees and costs incurred by the governmental entity related to the claim.
 - (d) This Subsection (3) does not limit or alter:
 - (i) claims against or the liability of the party that placed, disposed of, or released the hazardous materials or hazardous substances onto, into, under, or in a way that affects contaminated property; or
 - (ii) a workers' compensation claim made by an employee of an entity that works on contaminated property or conducts work related to contaminated property.
- (4) If a governmental entity that owns contaminated property develops the contaminated property for public or governmental purposes, including recreation, government offices, parking, or related uses, then Subsection (3) extends to that governmental entity, regardless of whether the governmental entity had a role in approving use of the contaminated property, if the governmental entity:
- (a) obtains a certificate of completion from the Utah Department of Environmental Quality following participation in the voluntary cleanup program, as set forth in Section 19-8-111; or
 - (b) complies with the terms of an environmental covenant signed by an agency and properly recorded in the county records against the property.

Enacted by Chapter 12, 2023 General Session