

Chapter 5 Resource Development Act

Part 1 General Provisions

63M-5-101 Title.

This chapter is known as the "Resource Development Act."

Enacted by Chapter 382, 2008 General Session

63M-5-102 Policy -- Legislative recognition.

- (1) The Legislature declares that the policy of this state is:
 - (a) to encourage industrial development and the development and utilization of the natural resources in this state in order to promote the economic development of this state and to provide benefits to the citizens of this state and other states; and
 - (b) to encourage co-operation between the state and its agencies and political subdivisions with individuals, firms, and business organizations to provide for industrial development and the development and utilization of the natural resources of this state.
- (2) The Legislature recognizes that:
 - (a) industrial development and the development and utilization of the natural resources in this state, particularly in rural areas, may have a significant financial impact on state agencies and units of local government unless adequate financing is made available to these state agencies and units of local government to enable them to provide necessary public works and improvements and public services prior to completion of natural resource and industrial facilities; and
 - (b) because of the time lag between the financial impact on affected units of government and the normal beginning of the receipt of additional tax revenues from this development normally begins, it may be necessary and in the public interest of this state and its political subdivisions to provide through utilization of ad valorem taxes funds for these necessary public works and improvements; and
 - (c) these necessary public works and improvements may in part be of benefit primarily to the industrial developer or the person developing or utilizing the natural resources in this state.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-103 Definitions.

As used in this chapter:

- (1) "Commencement of construction" means any clearing of land, excavation, or construction but does not include preliminary site review, including soil tests, topographical surveys, exploratory drilling, boring or mining, or other preliminary tests.
- (2) "Developer" means any person engaged or to be engaged in industrial development or the development or utilization of natural resources in this state through a natural resource or industrial facility, including owners, contract purchases of owners, and persons who, as a lessee or under an agreement, are engaged or to be engaged in industrial development or the development or utilization of natural resources in this state through a natural resource or industrial facility.

- (3) "Major developer" means any developer whose proposed new or additional natural resource facility or industrial facility is projected:
 - (a) To employ more than 500 people; or
 - (b) To cause the population of an affected unit of local government to increase by more than 5%, the increase to include the primary work force of the facility and their dependents and the work force and dependents attributable to commercial and public service employment created by the presence of the facility.
- (4) "Natural resource facility" or "industrial facility" means any land, structure, building, plant, mine, road, installation, excavation, machinery, equipment, or device, or any addition to, reconstruction, replacement, or improvement of, land or an existing structure, building, plant, mine, road, installation, excavation, machinery, or device reasonably used, erected, constructed, acquired, or installed by any person, if a substantial purpose of or result of the use, erection, construction, acquisition, rental, lease, or installation is related to industrial development or the development or utilization of the natural resources in this state.
- (5) "Person" includes any individual, firm, co-partnership, joint venture, corporation, estate, trust, business trust, syndicate, or any group or combination acting as a unit.
- (6) "Unit of local government" means any county, municipality, school district, local district, special service district, or any other political subdivision of the state.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 2 Prepayments

63M-5-201 Prepayment of ad valorem property taxes on natural resources or industrial facility.

The developer also may prepay, with the consent of the governing bodies of the units of local government affected, to the county treasurer, or to other persons authorized by the governing body of a unit of local government under Section 63M-5-306, a portion of the ad valorem property taxes which the developer anticipates will be imposed by the unit of local government under Title 59, Chapter 2, Part 9, Levies, in connection with the natural resources or industrial facility. Ad valorem property taxes prepaid under this chapter may not act as an abatement of the ad valorem property tax but rather shall be construed as a prepayment for which, notwithstanding Section 59-2-1321 or any statute of limitations to the contrary, a credit will be given the developer making the prepayment at the time the ad valorem property taxes become due and otherwise payable.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 3 Use of Funds

63M-5-301 State Board of Education and Department of Transportation to prepare budget and submit to governor.

The State Board of Education and the Department of Transportation shall prepare and submit to the governor, to be included in the governor's budget to the Legislature, a budget of the requirements for carrying out the provisions of this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-302 Appropriations for use of funds -- Board of Education and Department of Transportation -- Repayment by Board of Education -- Board of Education and Transportation Commission requirements.

- (1) The funds needed for construction of schools and highways and any of their related facilities as a result of industrial development or as a result of development or utilization of natural resources in this state through natural resource or industrial facilities shall be made available from the Prepaid Sales and Use Tax Construction Account through appropriations by the Legislature.
- (2) Appropriations will be made to the State Board of Education and the Department of Transportation for specific public facilities related to a specific natural resource or industrial facility.
- (3)
 - (a) Appropriations made to the State Board of Education for schools and related facilities shall be repaid to the General Fund through property tax assessments by the school district within whose boundary the natural resource or industrial facility is located.
 - (b) The repayment shall be made within a period of six years from the date of substantial completion of the natural resource or industrial facility or from the date the school district has a taxable value exceeding \$50,000,000, whichever occurs first.
 - (c) A refund shall be made to the developer of the natural resource or industrial facility to the extent of sales and use taxes prepaid by the developer in accordance with this chapter and appropriated by the Legislature for the specific public school facility, which have not been credited against sales and use taxes imposed by Title 59, Chapter 12, Sales and Use Tax Act.
- (4) The State Board of Education shall:
 - (a) determine school facility needs as respective communities develop by consulting with the school district within whose boundary the development project is located; and
 - (b) recommend to the Legislature the amount to be appropriated at each session of the Legislature.
- (5) The Transportation Commission shall:
 - (a) determine highway needs in the area of the natural resource or industrial facility;
 - (b) determine whether the highway should be a part of the state highway system; and
 - (c) recommend to the Legislature the amounts to be appropriated to the Department of Transportation for use on the highways.
- (6)
 - (a) The State Board of Education and the Department of Transportation shall assess and determine in connection with each public facility the portion of each facility of benefit primarily to the industrial developer or the person developing or utilizing the natural resources.
 - (b) The assessment shall be reported to the Legislature to be used in determining the amount to be appropriated subject to this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-303 Public facility -- Prepayment of sales and use tax in installments.

Notwithstanding anything to the contrary contained in this chapter, prepaid sales or use taxes sufficient to construct a particular public facility need not be prepaid in one sum but may be prepaid in installments as may be required by the state or any of its agencies or political subdivisions in fulfilling contractual commitments for the construction of the public facility if the state receives assurance that the funds for the agreed project will be prepaid to the State Tax Commission at the time or times for which the state or any of its agencies or political subdivisions have made contractual commitments for the disbursement of these funds for the public facility. In no event shall the total accumulated prepayment be less than the amount of sales and use taxes due for the calendar quarters for which returns are required to be filed under Section 59-12-107.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-304 Department of Transportation and county executives -- Cooperation in development or utilization -- Written agreements authorized -- Survey and location work.

- (1) The Department of Transportation and county executives shall cooperate with persons engaged in industrial development or the development of or utilization of natural resources in this state through a natural resource or industrial facility who desire to assist this state or its counties in obtaining financing through prepaid sales or use taxes for improvements to existing state or county roads or the construction of new state or county roads which are necessary to provide access to areas of natural resource or industrial facilities.
- (2) Where it is determined that the improvements or construction referred to cannot be financed with existing public funds or when the necessary improvement or construction would be unduly delayed by postponing the improvements or construction until funds are otherwise available and the Legislature has appropriated the necessary funds pursuant to Section 63M-5-302, the Department of Transportation or any county executive may enter into written agreements with the person engaged or to be engaged in industrial development or the development or utilization of natural resources through a natural resource or industrial facility providing for the necessary improvements or construction if that person agrees to the prepayment of sales or use taxes as provided in this chapter to the extent necessary to provide the funds needed to finance the necessary improvements or construction.
- (3) The agreements shall include the assurances necessary to provide the state or the county adequate funds for the payment of all obligations incurred by the state or county for the necessary improvements or construction and for the transfer of funds and all necessary adjustments, if the funds prepaid exceed the actual expenditures made for the improvements or construction.
- (4) If the actual expenditures made by the state, its agencies, or political subdivisions for the improvements or construction exceed the amount of prepaid sales and use taxes actually imposed by Title 59, Chapter 12, Sales and Use Tax Act, then no refund shall be allowed for the excess amount prepaid as sales or use taxes.
- (5) Initial survey and location work by the Department of Transportation or a county may proceed prior to the execution of any agreements if otherwise authorized and funded.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-305 Tax Commission -- Rules and regulations.

For the purpose of more efficiently administering this act the State Tax Commission is authorized in its discretion to formulate, amend, or cancel rules and regulations establishing

procedures regarding matters pertaining to the prepayment of sales or use taxes as provided in this act and the credit against sales or use taxes as the same become due and otherwise payable.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-306 Financial impact statement -- Alleviation plan -- Filing required -- Contents -- Payments credited against tax -- Provisions neither exclusive nor mandatory.

- (1)
 - (a) A developer desiring to prepay ad valorem property taxes under Section 63M-5-201 shall first prepare and file with the Governor's Office of Economic Development and all units of local government likely to be affected with a significant financial impact due to a natural resource or industrial facility a financial impact statement together with a plan for alleviating these impacts.
 - (b) The impact statement and the alleviation plan shall be prepared in cooperation with and after consultation with the Governor's Office of Economic Development and the affected units of local government.
 - (c) The financial impact statement shall assess the projected financial impact on state agencies and units of local government, including the impact on transportation systems, culinary water systems, waste treatment facilities, public safety, schools, public health, housing, planning and zoning, and general government administration.
 - (d) The alleviation plan shall set out proposals for alleviating the impact and may include payments to local units of government or direct expenditures by the developer to alleviate the impact.
 - (e) The impact statement and the alleviation plan may be amended by the developer in cooperation with and after consultation with the Governor's Office of Economic Development and those units of local government affected by the amendment.
- (2) At least 90 days prior to commencement of construction of an industrial facility or natural resources facility by a major developer, an impact statement and alleviation plan as described in Subsection (1) shall be filed by the major developer whether or not the major developer desires to prepay ad valorem property taxes.
- (3)
 - (a) Upon the filing of the financial impact statement and alleviation plan, a developer may apply to the governing body of the affected unit of local government for authorization to prepay a portion of the anticipated ad valorem property taxes to be expended consistent with the alleviation plan.
 - (b) This authorization may provide that only a portion of the amounts so prepaid can be applied against the ad valorem property taxes due in any given year.
 - (c) In addition to payments directly to the affected unit of local government, an affected unit of local government may authorize a tax credit on anticipated ad valorem property taxes for expenditures made by the developer to other persons so long as the expenditure is consistent with the alleviation plan.
- (4)
 - (a) This chapter is designed to provide an additional mechanism for the alleviation of impacts on units of local government and is not intended to discourage the use of other mechanisms as may be available.
 - (b) Nothing in this chapter requires a developer to prepay ad valorem property taxes or to make any other expenditure not otherwise required by law.

Renumbered and Amended by Chapter 382, 2008 General Session