

SB0045S02 compared with SB0045S01

~~text~~ shows text that was in SB0045S01 but was deleted in SB0045S02.

text shows text that was not in SB0045S01 but was inserted into SB0045S02.

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Senator Jerry W. Stevenson proposes the following substitute bill:

MILITARY INSTALLATION DEVELOPMENT AUTHORITY

AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jerry W. Stevenson

House Sponsor: ~~_____~~ Brad L. Dee

LONG TITLE

General Description:

This bill modifies Title 19, Chapter 6, Part 5, Solid Waste Management Act, and Title 63H, Chapter 1, Military Installation Development Authority Act.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "solid waste management facility" to include an auxiliary energy facility that is connected to an existing resource recovery facility;
- ▶ repeals Section 19-6-504, which discusses certain requirements for a public entity that issues bonds to finance a solid waste management facility;
- ▶ defines the term "development" to include certain activities within a project area;

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- ▶ modifies the definition of "property tax" to not include a privilege tax on a portion of a facility on military land leased back to the military under certain circumstances;
- ▶ describes certain exemptions from the Condominium Ownership Act;
- ▶ modifies the definition of "publicly owned infrastructure and improvements";
- ▶ ~~{provides that the Military Installation Development Authority may not levy}~~repeals the MIDA energy tax ~~{ in an area in which construction on a federally owned data center began prior to January 1, 2012, unless a manager of the data center:~~
 - ~~• provides written consent to the levy;~~
 - ~~• specifies the percentage of the levy or the amount of money to be raised by the levy; and~~
 - ~~• specifies the agreed uses of the money generated from the levy}; and~~
- ▶ provides that the issuance of a certificate of occupancy by the authority, or an entity designated by the authority, determines when improvements on a parcel within a project area ~~{becomes}~~become subject to property tax.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-6-502, as last amended by Laws of Utah 2008, Chapters 89 and 360

63H-1-102, as last amended by Laws of Utah 2013, Chapter 362

~~{63H-1-204, as enacted}~~**63H-1-202**, as last amended by Laws of Utah 2010, Chapter 9

63H-1-203, as last amended by Laws of Utah 2013, Chapter 362

63H-1-501, as last amended by Laws of Utah 2013, Chapter 362

63H-1-502, as last amended by Laws of Utah 2013, Chapter 362

REPEALS:

19-6-504, as renumbered and amended by Laws of Utah 1991, Chapter 112

63H-1-204, as enacted by Laws of Utah 2013, Chapter 362

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

Section 1. Section **19-6-502** is amended to read:

19-6-502. Definitions.

As used in this part:

- (1) "Governing body" means the governing board, commission, or council of a public entity.
- (2) "Jurisdiction" means the area within the incorporated limits of:
 - (a) a municipality;
 - (b) a special service district;
 - (c) a municipal-type service district;
 - (d) a service area; or
 - (e) the territorial area of a county not lying within a municipality.
- (3) "Long-term agreement" means an agreement or contract having a term of more than five years but less than 50 years.
- (4) "Municipal residential waste" means solid waste that is:
 - (a) discarded or rejected at a residence within the public entity's jurisdiction; and
 - (b) collected at or near the residence by:
 - (i) a public entity; or
 - (ii) a person with whom the public entity has as an agreement to provide solid waste management.
- (5) "Public entity" means:
 - (a) a county;
 - (b) a municipality;
 - (c) a special service district under Title 17D, Chapter 1, Special Service District Act;
 - (d) a service area under Title 17B, Chapter 2a, Part 9, Service Area Act; or
 - (e) a municipal-type service district created under Title 17, Chapter 34, Municipal-Type Services to Unincorporated Areas.
- (6) "Requirement" means an ordinance, policy, rule, mandate, or other directive that imposes a legal duty on a person.
- (7) "Residence" means an improvement to real property used or occupied as a primary or secondary detached single-family dwelling.

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(8) "Resource recovery" means the separation, extraction, recycling, or recovery of usable material, energy, fuel, or heat from solid waste and the disposition of it.

(9) "Short-term agreement" means a contract or agreement having a term of five years or less.

(10) (a) "Solid waste" means a putrescible or nonputrescible material or substance discarded or rejected as being spent, useless, worthless, or in excess of the owner's needs at the time of discard or rejection, including:

- (i) garbage;
- (ii) refuse;
- (iii) industrial and commercial waste;
- (iv) sludge from an air or water control facility;
- (v) rubbish;
- (vi) ash;
- (vii) contained gaseous material;
- (viii) incinerator residue;
- (ix) demolition and construction debris;
- (x) a discarded automobile; and
- (xi) offal.

(b) "Solid waste" does not include sewage or another highly diluted water carried material or substance and those in gaseous form.

(11) "Solid waste management" means the purposeful and systematic collection, transportation, storage, processing, recovery, or disposal of solid waste.

(12) "Solid waste management facility" means a facility employed for solid waste management, including:

- (a) a transfer station;
- (b) a transport system;
- (c) a baling facility;
- (d) a landfill; and
- (e) a processing system, including:
 - (i) a resource recovery facility;
 - (ii) a facility for reducing solid waste volume;

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- (iii) a plant or facility for compacting, composting, or pyrolyzation of solid waste;
- (iv) an incinerator;
- (v) a solid waste disposal, reduction, or conversion facility; ~~and~~
- (vi) a facility for resource recovery of energy consisting of:
 - (A) a facility for the production, transmission, distribution, and sale of heat and steam;
 - (B) a facility for the generation and sale of electric energy to a public utility, municipality, or other public entity that owns and operates an electric power system on March 15, 1982; and
 - (C) a facility for the generation, sale, and transmission of electric energy on an emergency basis only to a military installation of the United States~~[-]~~; and
- (vii) an auxiliary energy facility that is connected to a facility for resource recovery of energy as described in Subsection (12)(e)(vi), that:
 - (A) is fueled by natural gas, landfill gas, or both;
 - (B) consists of a facility for the production, transmission, distribution, and sale of supplemental heat and steam to meet all or a portion of the heat and steam requirements of a military installation of the United States; and
 - (C) consists of a facility for the generation, transmission, distribution, and sale of electric energy to a public utility, a municipality described in Subsection (12)(e)(vi)(B), or a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

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

63H-1-102. Definitions.

As used in this chapter:

- (1) "Authority" means the Military Installation Development Authority, created under Section 63H-1-201.
- (2) "Base taxable value" means:
 - (a) for military land or other land that was exempt from a property tax at the time that a project area was created that included the military land or other land, a taxable value of zero; or
 - (b) for private property that is included in a project area, the taxable value of the property within any portion of the project area, as designated by board resolution, from which tax increment will be collected, as shown upon the assessment roll last equalized before the year in which the authority issues a building permit for a building within that portion of the

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project area.

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

(4) (a) "Dedicated tax collections" means the property tax that remains after the authority is paid the tax increment it is entitled to receive under Subsection 63H-1-501(1), for a property tax levied by:

(i) a county, including a district the county has established under Subsection 17-34-3(2) to levy a property tax under Title 17, Chapter 34, Municipal-Type Services to Unincorporated Areas; or

(ii) an included municipality.

(b) "Dedicated tax collections" does not include a property tax levied by a county to assess and collect property taxes under Subsections 59-2-1602(1) and (4).

(5) (a) "Development" means an activity occurring on land within a project area that is owned or operated by the military, the authority, another public entity, or a private entity.

(b) "Development" includes the demolition, construction, reconstruction, modification, expansion, or improvement of a building, facility, utility, landscape, parking lot, park, trail, or recreational amenity.

~~[(5)]~~ (6) "Development project" means a project to develop land within a project area.

~~[(6)]~~ (7) "Elected member" means a member of the authority board who:

(a) is a mayor or member of a legislative body appointed under Subsection 63H-1-302(2)(b); or

(b) (i) is appointed to the authority board under Subsection 63H-1-302(2)(a) or (3); and

(ii) concurrently serves in an elected state, county, or municipal office.

~~[(7)]~~ (8) "Included municipality" means a municipality, some or all of which is included within a project area.

~~[(8)]~~ ~~[(9)]~~ "Military Installation Development Authority energy tax" or "MIDA energy tax" means the tax levied under Section 63H-1-204. 1

~~[(9)]~~ ~~[(10)]~~ "Military land" means land or a facility, including leased land or a leased facility, that is part of or affiliated with a base, camp, post, station, yard, center, or installation under the jurisdiction of the U.S. Department of Defense or the Utah National Guard.

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~~(10)~~ ~~(11)~~ "Municipal energy tax" means a municipal energy sales and use tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act.

~~(11)~~ ~~(12)~~ "Municipal services revenue" means revenue that the authority:

- (a) collects from the authority's:
 - (i) levy of a municipal energy tax;
 - (ii) levy of a MIDA energy tax;
 - (iii) levy of a telecommunications tax;
 - (iv) imposition of a transient room tax; and
 - (v) imposition of a resort communities tax;
- (b) receives under Subsection 59-12-205(2)(b)(ii); and
- (c) receives as dedicated tax collections.

~~(12)~~ ~~(13)~~ "Municipal tax" means a municipal energy tax, ~~MIDA energy tax,~~ telecommunications tax, transient room tax, or resort communities tax.

~~(13)~~ ~~(14)~~ "Project area" means the land, including military land, whether consisting of a single contiguous area or multiple noncontiguous areas, described in a project area plan or draft project area plan, where the development project set forth in the project area plan or draft project area plan takes place or is proposed to take place.

~~(14)~~ ~~(15)~~ "Project area budget" means a multiyear projection of annual or cumulative revenues and expenses and other fiscal matters pertaining to a project area that includes:

- (a) the base taxable value of property in the project area;
- (b) the projected tax increment expected to be generated within the project area;
- (c) the amount of the tax increment expected to be shared with other taxing entities;
- (d) the amount of the tax increment expected to be used to implement the project area plan, including the estimated amount of the tax increment to be used for land acquisition, public improvements, infrastructure improvements, and loans, grants, or other incentives to private and public entities;
- (e) the tax increment expected to be used to cover the cost of administering the project area plan;
- (f) if the tax increment is to be collected at different times or from different portions of the project area, or both:

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

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

(ii) an estimate of when other portions of the project area will become subject to collection of the tax increment; and

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

~~§§(15)§§ (16)~~ "Project area plan" means a written plan that, after its effective date, guides and controls the development within a project area.

~~§§(16)§§ (17)§(a)~~ "Property tax" includes a privilege tax, except as described in Subsection ~~(17)16~~(b), and each levy on an ad valorem basis on tangible or intangible personal or real property.

(b) "Property tax" does not include a privilege tax on the taxable value attributable to a portion of a facility leased to the military for a calendar year when:

(i) a lessee of military land has constructed a facility on the military land that is part of a project area;

(ii) the lessee leases space in the facility to the military for the entire calendar year; and

(iii) the lease rate paid by the military for the space is \$1 or less for the entire calendar year, not including any common charges that are reimbursements for actual expenses.

~~§§(17)§§ (18)~~ "Public entity" means:

(a) the state, including each department or agency of the state; or

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

~~[(18) "Publicly owned infrastructure and improvements" means water, sewer, storm drainage, electrical, telecommunications, and other similar systems and lines, streets, roads, curb, gutter, sidewalk, walkways, parking facilities, public transportation facilities, and other buildings, facilities, infrastructure, and improvements that:]~~

~~[(a) benefit the public; and]~~

~~[(b) are:]~~

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~~[(i) publicly owned or owned by a utility; or]~~

~~[(ii) publicly maintained or operated by the authority or another public entity.]~~

~~(19)~~ 18 (a) "Publicly owned infrastructure and improvements" means infrastructure, improvements, facilities, or buildings that benefit the public and are:

(i) publicly owned by the military, the authority, or another public entity;

(ii) owned by a utility; or

(iii) publicly maintained or operated by the military, the authority, or another public entity.

(b) "Publicly owned infrastructure and improvements" includes:

(i) facilities, lines, or systems that provide water, chilled water, steam, sewer, storm drainage, natural gas, electricity, or telecommunications; and

(ii) streets, roads, curb, gutter, sidewalk, walkways, solid waste facilities, parking facilities, and public transportation facilities.

~~(19)~~ ~~(20)~~ "Remaining municipal services revenue" means municipal services revenue that the authority has not spent during its fiscal year for municipal services as provided in Subsection 63H-1-503(1).

~~(20)~~ ~~(21)~~ "Resort communities tax" means a sales and use tax imposed under Section 59-12-401.

~~(21)~~ ~~(22)~~ "Taxable value" means the value of property as shown on the last equalized assessment roll as certified by the county assessor.

~~(22)~~ ~~(23)~~ "Tax increment" means the difference between:

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

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

~~(23)~~ ~~(24)~~ "Taxing entity" means a public entity that levies a tax on property within a project area.

~~(24)~~ ~~(25)~~ "Telecommunications tax" means a telecommunications license tax under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

~~(25)~~ ~~(26)~~ "Transient room tax" means a tax under Section 59-12-352.

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Section 3. Section 63H-1-202 is amended to read:

63H-1-202. Applicability of other law.

(1) 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) [any] ordinances or regulations of a county or municipality, including those relating to land use, health, business license, or franchise; or

(d) the jurisdiction of [any] a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act.

(2) 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.

(3) (a) The definitions in Section 57-8-3 apply to this Subsection (3).

(b) Notwithstanding the provisions of Title 57, Chapter 8, Condominium Ownership Act:

(i) if the military is the owner of land on which a condominium project is constructed, it is not required to sign, execute, or record a declaration of a condominium project; and

(ii) if a condominium unit is 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; and

(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.

Section 4. Section 63H-1-203 is amended to read:

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:

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- (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.

Section ~~{3. Section 63H-1-204~~ is amended to read:

~~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.~~

~~(6) (a) Except as provided in Subsection (6)(b), the authority may not levy the MIDA energy tax in a project area in which construction on a federally owned data center began before January 1, 2012.~~

~~(b) The MIDA energy tax may be levied if a manager of a federally owned data center that would otherwise be exempt from the tax provides written notice that:~~

~~(i) the federally owned data center agrees to the levy;~~

~~(ii) specifies the percentage of the levy or the amount of money to be raised; and~~

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~~(iii) specifies the agreed uses of money generated from the levy.~~

~~Section 4}~~5. Section **63H-1-501** is amended to read:

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

(1) (a) The authority may:

(i) subject to Subsection (1)(b), receive up to 75% of the tax increment for up to 25 years, as provided in this part; and

(ii) use the tax increment during and after the period described in Subsection (1)(a)(i).

(b) With respect to a parcel located within a project area, the 25-year period described in Subsection (1)(a)(i) shall begin on the day on which the authority receives the first tax increment from that parcel.

(2) Improvements on a parcel within a project area become subject to property tax on January 1 immediately following the day on which the authority or an entity designated by the authority issues a certificate of occupancy with respect to those improvements.

(3) Each county that collects property tax on property within a project area shall pay and distribute to the authority the tax increment and dedicated tax collections that the authority is entitled to collect under this title, in the manner and at the time provided in Section 59-2-1365.

(4) (a) The board shall determine by resolution when the entire project area or an individual parcel within a project area is subject to tax increment.

(b) The board shall amend the project area budget to reflect whether a parcel within a project area is subject to tax increment.

Section 6. Section **63H-1-502** is amended to read:

63H-1-502. Allowable uses of tax increment and other funds.

(1) Other than municipal services revenue, the authority may use tax increment and other funds available to the authority:

(a) for any purpose authorized under this chapter;

(b) for administrative, overhead, legal, and other operating expenses of the authority;

(c) to pay for, including financing or refinancing, all or part of the development of land within the project area from which the tax increment or other funds were collected, including assisting the ongoing operation of a development or facility within the project area;

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(d) to pay the cost of the installation and construction of publicly owned infrastructure and improvements within the project area from which the tax increment funds were collected;

(e) to pay the cost of the installation of publicly owned infrastructure and improvements, including a passenger ropeway, as defined in Section 72-11-102, outside the project area if:

(i) the authority board determines by resolution that the infrastructure and improvements are of benefit to the project area; and

(ii) for a passenger ropeway, at least one end of the ropeway is located within the project area; and

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

(2) The authority may use revenue generated from the operation of publicly owned infrastructure operated by the authority or improvements operated by the authority to:

(a) operate and maintain the infrastructure or improvements; and

(b) pay for authority operating expenses, including administrative, overhead, and legal expenses.

(3) For purposes of Subsection (1), the authority may use:

(a) tax revenues received under Subsection 59-12-205(2)(b)(ii); and

(b) resort communities tax revenues generated from a project area that contains private land[; and].

[(c) MIDA energy tax revenue, received under Section 63H-1-204, which does not have to be used in the project area where the revenue was generated.]

(4) The determination of the authority board under Subsection (1)(e) regarding benefit to the project area is final.

Section ~~5~~7. Repealer.

This bill repeals:

Section 19-6-504, Assurance of sufficient revenue to pay bonds.

Section 63H-1-204, MIDA energy tax.