

## SB0111S02 compared with SB0111S01

~~text~~ shows text that was in SB0111S01 but was deleted in SB0111S02.

text shows text that was not in SB0111S01 but was inserted into SB0111S02.

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Senator Aaron Osmond proposes the following substitute bill:

### EDUCATION FUNDING EQUALIZATION

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Aaron Osmond**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill makes changes related to school property taxes and funding.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the Minimum Basic Growth Account within the Uniform School Fund to fund the School LAND Trust Program;
- ▶ amends the calculation of the school minimum basic tax rate;
- ▶ requires specified revenue to be deposited into the Minimum Basic Growth Account;
- ▶ provides for the allocation of funds deposited into the Minimum Basic Growth Account;

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- ▶ repeals certain public notice requirements related to the school minimum basic tax rate;
- ▶ amends requirements for a school improvement plan; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill has retrospective operation to January 1, 2014.

### Utah Code Sections Affected:

#### AMENDS:

- 11-13-302**, as last amended by Laws of Utah 2011, Chapter 371
- 53A-1a-108.5**, as enacted by Laws of Utah 2002, Chapter 324
- 53A-16-101**, as last amended by Laws of Utah 2013, Chapter 235
- 53A-16-101.5**, as last amended by Laws of Utah 2013, Chapter 296
- 53A-17a-103**, as last amended by Laws of Utah 2011, Chapter 371
- 53A-17a-135**, as last amended by Laws of Utah 2013, Chapter 7
- 59-2-102**, as last amended by Laws of Utah 2013, Chapters 19 and 322
- 59-2-926**, as last amended by Laws of Utah 2009, Chapter 388

#### REPEALS:

- 53A-17a-131.17**, as last amended by Laws of Utah 2010, Chapter 3

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

Section 1. Section **11-13-302** is amended to read:

**11-13-302. Payment of fee in lieu of ad valorem property tax by certain energy suppliers -- Method of calculating -- Collection -- Extent of tax lien.**

(1) (a) Each project entity created under this chapter that owns a project and that sells any capacity, service, or other benefit from it to an energy supplier or suppliers whose tangible property is not exempted by Utah Constitution Article XIII, Section 3, from the payment of ad valorem property tax, shall pay an annual fee in lieu of ad valorem property tax as provided in this section to each taxing jurisdiction within which the project or any part of it is located.

(b) For purposes of this section, "annual fee" means the annual fee described in

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Subsection (1)(a) that is in lieu of ad valorem property tax.

(c) The requirement to pay an annual fee shall commence:

(i) with respect to each taxing jurisdiction that is a candidate receiving the benefit of impact alleviation payments under contracts or determination orders provided for in Sections 11-13-305 and 11-13-306, with the fiscal year of the candidate following the fiscal year of the candidate in which the date of commercial operation of the last generating unit, other than any generating unit providing additional project capacity, of the project occurs, or, in the case of any facilities providing additional project capacity, with the fiscal year of the candidate following the fiscal year of the candidate in which the date of commercial operation of the generating unit providing the additional project capacity occurs; and

(ii) with respect to any taxing jurisdiction other than a taxing jurisdiction described in Subsection (1)(c)(i), with the fiscal year of the taxing jurisdiction in which construction of the project commences, or, in the case of facilities providing additional project capacity, with the fiscal year of the taxing jurisdiction in which construction of those facilities commences.

(d) The requirement to pay an annual fee shall continue for the period of the useful life of the project or facilities.

(2) (a) The annual fees due a school district shall be as provided in Subsection (2)(b) because the ad valorem property tax imposed by a school district and authorized by the Legislature represents both:

(i) a levy mandated by the state for the state minimum school program under Section 53A-17a-135; and

(ii) local levies for capital outlay and other purposes under Sections 53A-16-113, 53A-17a-133, and 53A-17a-164.

(b) The annual fees due a school district shall be as follows:

(i) the project entity shall pay to the school district an annual fee for the state minimum school program at the rate imposed by the school district and authorized by the Legislature under ~~[Subsection]~~ Section 53A-17a-135~~(1)~~; and

(ii) for all other local property tax levies authorized to be imposed by a school district, the project entity shall pay to the school district either:

(A) an annual fee; or

(B) impact alleviation payments under contracts or determination orders provided for

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in Sections 11-13-305 and 11-13-306.

(3) (a) An annual fee due a taxing jurisdiction for a particular year shall be calculated by multiplying the tax rate or rates of the jurisdiction for that year by the product obtained by multiplying the fee base or value determined in accordance with Subsection (4) for that year of the portion of the project located within the jurisdiction by the percentage of the project which is used to produce the capacity, service, or other benefit sold to the energy supplier or suppliers.

(b) As used in this section, "tax rate," when applied in respect to a school district, includes any assessment to be made by the school district under Subsection (2) or Section 63M-5-302.

(c) There is to be credited against the annual fee due a taxing jurisdiction for each year, an amount equal to the debt service, if any, payable in that year by the project entity on bonds, the proceeds of which were used to provide public facilities and services for impact alleviation in the taxing jurisdiction in accordance with Sections 11-13-305 and 11-13-306.

(d) The tax rate for the taxing jurisdiction for that year shall be computed so as to:

(i) take into account the fee base or value of the percentage of the project located within the taxing jurisdiction determined in accordance with Subsection (4) used to produce the capacity, service, or other benefit sold to the supplier or suppliers; and

(ii) reflect any credit to be given in that year.

(4) (a) Except as otherwise provided in this section, the annual fees required by this section shall be paid, collected, and distributed to the taxing jurisdiction as if:

(i) the annual fees were ad valorem property taxes; and

(ii) the project were assessed at the same rate and upon the same measure of value as taxable property in the state.

(b) (i) Notwithstanding Subsection (4)(a), for purposes of an annual fee required by this section, the fee base of a project may be determined in accordance with an agreement among:

(A) the project entity; and

(B) any county that:

(I) is due an annual fee from the project entity; and

(II) agrees to have the fee base of the project determined in accordance with the agreement described in this Subsection (4).

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(ii) The agreement described in Subsection (4)(b)(i):

(A) shall specify each year for which the fee base determined by the agreement shall be used for purposes of an annual fee; and

(B) may not modify any provision of this chapter except the method by which the fee base of a project is determined for purposes of an annual fee.

(iii) For purposes of an annual fee imposed by a taxing jurisdiction within a county described in Subsection (4)(b)(i)(B), the fee base determined by the agreement described in Subsection (4)(b)(i) shall be used for purposes of an annual fee imposed by that taxing jurisdiction.

(iv) (A) If there is not agreement as to the fee base of a portion of a project for any year, for purposes of an annual fee, the State Tax Commission shall determine the value of that portion of the project for which there is not an agreement:

(I) for that year; and

(II) using the same measure of value as is used for taxable property in the state.

(B) The valuation required by Subsection (4)(b)(iv)(A) shall be made by the State Tax Commission in accordance with rules made by the State Tax Commission.

(c) Payments of the annual fees shall be made from:

(i) the proceeds of bonds issued for the project; and

(ii) revenues derived by the project entity from the project.

(d) (i) The contracts of the project entity with the purchasers of the capacity, service, or other benefits of the project whose tangible property is not exempted by Utah Constitution Article XIII, Section 3, from the payment of ad valorem property tax shall require each purchaser, whether or not located in the state, to pay, to the extent not otherwise provided for, its share, determined in accordance with the terms of the contract, of these fees.

(ii) It is the responsibility of the project entity to enforce the obligations of the purchasers.

(5) (a) The responsibility of the project entity to make payment of the annual fees is limited to the extent that there is legally available to the project entity, from bond proceeds or revenues, money to make these payments, and the obligation to make payments of the annual fees is not otherwise a general obligation or liability of the project entity.

(b) No tax lien may attach upon any property or money of the project entity by virtue of

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any failure to pay all or any part of an annual fee.

(c) The project entity or any purchaser may contest the validity of an annual fee to the same extent as if the payment was a payment of the ad valorem property tax itself.

(d) The payments of an annual fee shall be reduced to the extent that any contest is successful.

(6) (a) The annual fee described in Subsection (1):

(i) shall be paid by a public agency that:

(A) is not a project entity; and

(B) owns an interest in a facility providing additional project capacity if the interest is otherwise exempt from taxation pursuant to Utah Constitution, Article XIII, Section 3; and

(ii) for a public agency described in Subsection (6)(a)(i), shall be calculated in accordance with Subsection (6)(b).

(b) The annual fee required under Subsection (6)(a) shall be an amount equal to the tax rate or rates of the applicable taxing jurisdiction multiplied by the product of the following:

(i) the fee base or value of the facility providing additional project capacity located within the jurisdiction;

(ii) the percentage of the ownership interest of the public agency in the facility; and

(iii) the portion, expressed as a percentage, of the public agency's ownership interest that is attributable to the capacity, service, or other benefit from the facility that is sold by the public agency to an energy supplier or suppliers whose tangible property is not exempted by Utah Constitution, Article XIII, Section 3, from the payment of ad valorem property tax.

(c) A public agency paying the annual fee pursuant to Subsection (6)(a) shall have the obligations, credits, rights, and protections set forth in Subsections (1) through (5) with respect to its ownership interest as though it were a project entity.

Section 2. Section **53A-1a-108.5** is amended to read:

### **53A-1a-108.5. School improvement plan.**

(1) (a) Each school community council shall annually evaluate the school's U-PASS test results and use the evaluations in developing a school improvement plan.

(b) In evaluating U-PASS test results and developing a school improvement plan, a school community council may not have access to data that reveal the identity of students.

(2) Each school improvement plan shall:

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- (a) identify the school's most critical academic needs;
- (b) recommend a course of action to meet the identified needs;
- (c) list any programs, practices, materials, or equipment that the school will need to implement its action plan to have a direct impact on the instruction of students and result in measurable increased student performance; ~~and~~
- (d) specify actions that school leadership will take to improve student achievement;
- (e) specify what actions will be implemented to ensure that high quality instruction is delivered to all students;
- (f) describe how assessments will be used to inform instruction;
- (g) describe how targeted interventions will be implemented to meet individual student needs;
- (h) specify what actions will be taken to ensure that professional development results in improved student achievement; and

~~(d)~~ (i) describe how the school intends to enhance or improve academic achievement, including how financial resources available to the school, such as School LAND Trust Program money received under Section 53A-16-101.5 and state and federal grants, will be used to enhance or improve academic achievement.

(3) The school improvement plan shall focus on the school's most critical academic needs but may include other actions to enhance or improve academic achievement and community environment for students.

(4) The school principal shall make available to the school community council the school budget and other data needed to develop the school improvement plan.

(5) The school improvement plan shall be subject to the approval of the local school board of the school district in which the school is located.

(6) A school community council may develop a multiyear school improvement plan, but the plan must be presented to and approved annually by the local school board.

(7) Each school shall:

- (a) implement the school improvement plan as developed by the school community council and approved by the local school board;
- (b) provide ongoing support for the council's plan; and
- (c) meet local school board reporting requirements regarding performance and

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accountability.

Section 3. Section **53A-16-101** is amended to read:

### **53A-16-101. Uniform School Fund -- Contents -- Interest and Dividends Account -- Invest More for Education Account.**

(1) The Uniform School Fund, a special revenue fund within the Education Fund, established by Utah Constitution, Article X, Section 5, consists of:

(a) interest and dividends derived from the investment of money in the permanent State School Fund established by Utah Constitution, Article X, Section 5;

(b) money transferred to the fund pursuant to Title 67, Chapter 4a, Unclaimed Property Act; and

(c) all other constitutional or legislative allocations to the fund, including revenues received by donation.

(2) (a) There is created within the Uniform School Fund a restricted account known as the "Interest and Dividends Account."

(b) The Interest and Dividends Account consists of:

(i) interest and dividends derived from the investment of money in the permanent State School Fund referred to in Subsection (1)(a); and

(ii) interest on account money.

(3) (a) Upon appropriation by the Legislature, money from the Interest and Dividends Account shall be used for:

(i) the administration of the School LAND Trust Program as provided in Section 53A-16-101.5; and

(ii) the performance of duties described in Section 53A-16-101.6.

(b) The Legislature may appropriate any remaining balance for the support of the public education system.

(4) (a) There is created within the Uniform School Fund a restricted account known as the "Invest More for Education Account."

(b) The account shall be funded by contributions deposited into the restricted account in accordance with Section 59-10-1318.

(c) The account shall earn interest.

(d) Interest earned on the account shall be deposited into the account.



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(e) The Legislature may appropriate money from the account for the support of the public education system.

(5) (a) There is created within the Uniform School Fund a restricted account known as the "Minimum Basic Growth Account."

(b) The account shall be funded by amounts appropriated into the account in accordance with Section 53A-17a-135.

(c) The account shall earn interest.

(d) Interest earned on the account shall be deposited into the account.

(e) Upon appropriation by the Legislature, money from the account shall be used to fund the School LAND Trust Program as provided in Section 53A-16-101.5.

(f) The Legislature may not appropriate money from the account for the performance of duties described in Section 53A-16-101.6.

Section 4. Section **53A-16-101.5** is amended to read:

**53A-16-101.5. School LAND Trust Program -- Purpose -- Distribution of funds -- School plans for use of funds.**

(1) There is established the School LAND (Learning And Nurturing Development) Trust Program to:

(a) provide financial resources to public schools to enhance or improve student academic achievement and implement a component of the school improvement plan; and

(b) involve parents and guardians of a school's students in decision making regarding the expenditure of School LAND Trust Program money allocated to the school.

(2) (a) The program shall be funded each fiscal year from:

(i) [~~from~~] the Interest and Dividends Account created in Section 53A-16-101[~~;~~ and (ii)] in the amount of the sum of the following:

(A) the interest and dividends from the investment of money in the permanent State School Fund deposited to the Interest and Dividends Account in the immediately preceding year; and

(B) interest accrued on money in the Interest and Dividends Account in the immediately preceding fiscal year[~~;~~ and

(ii) the Minimum Basic Growth Account created in Section 53A-16-101.

(b) On and after July 1, 2003, the program shall be funded as provided in Subsection

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(2)(a)(i) up to an amount equal to 2% of the funds provided for the Minimum School Program, pursuant to Title 53A, Chapter 17a, Minimum School Program Act, each fiscal year.

(c) (i) The Legislature shall annually allocate, through an appropriation to the State Board of Education, a portion of the Interest and Dividends Account created in Section 53A-16-101 to be used for:

(A) the administration of the School LAND Trust Program; and

(B) the performance of duties described in Section 53A-16-101.6.

(ii) Any unused balance remaining from an amount appropriated under Subsection (2)(c)(i) shall be deposited in the Interest and Dividends Account for distribution to schools in the School LAND Trust Program.

(3) (a) The State Board of Education shall allocate the money [~~referred to in Subsection (2)~~] described under Subsections (2)(a)(i) and (ii) annually for the fiscal year beginning July 1, 2013, and for each fiscal year thereafter as follows:

(i) the Utah Schools for the Deaf and the Blind and the charter schools combined shall receive funding equal to the product of:

(A) enrollment on October 1 in the prior year at the Utah Schools for the Deaf and the Blind, or in the charter schools combined, divided by enrollment on October 1 in the prior year in public schools statewide; and

(B) the total amount available for distribution under [~~Subsection (2)~~] Subsections (2)(a)(i) and (ii);

(ii) the amount allocated to the charter schools combined under Subsection (3)(a)(i) shall be distributed among charter schools in accordance with a formula specified in rules adopted by the State Board of Education in consultation with the State Charter School Board; and

(iii) of the funds available for distribution under [~~Subsection (2)~~] Subsections (2)(a)(i) and (ii) after the allocation of funds for the Utah Schools for the Deaf and the Blind and charter schools:

(A) school districts shall receive 10% of the funds on an equal basis; and

(B) the remaining 90% of the funds shall be distributed on a per student basis.

(b) For the allocations made under Subsection (3)(a), the State Board of Education shall provide a separate allocation to each entity for the money described under:

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(i) Subsection (2)(a)(i); and

(ii) Subsection (2)(a)(ii).

~~[(b)–A]~~ (c) Subject to Subsection (3)(d), a school district shall distribute its allocation under Subsection (3)(a)(iii) to [each school] schools within the district [on an equal per student basis.] as follows:

(i) an allocation of the money described under Subsection (2)(a)(i) shall be distributed to each school within the district on an equal per student basis;

(ii) for an allocation of the money described under Subsection (2)(a)(ii):

(A) 25% shall be distributed to each school within the district on an equal per student basis; and

(B) 75% shall be distributed to schools within the district at the direction of the local school board.

(d) A school district may retain up to ~~{2%}~~5% of the amount of money described under Subsection ~~(~~2~~)3~~~~(~~a~~)c~~(ii) and allocated to the school district by the State Board of Education in accordance with Subsection (3)(a) to be used to offset the cost of:

(i) distributing the money described under Subsection (2)(a)(ii) in accordance with Subsection (3)(c)(ii); ~~and~~

(ii) auditing the use of the money distributed to schools in accordance with Subsection (3)(c) ~~and~~; and

(iii) providing training to a school community council.

~~[(e)]~~ (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education may make rules regarding the time and manner in which the student count shall be made for allocation of the money under Subsection (3)(a)(iii).

(4) To receive its allocation under Subsection (3):

(a) a school shall have established a school community council in accordance with Section 53A-1a-108; and

(b) the school's principal shall provide a signed, written assurance in accordance with rules of the State Board of Education that the membership of the school community council is consistent with the membership requirements specified in Section 53A-1a-108.

(5) (a) (i) The school community council or its subcommittee shall create a program to use its allocation under Subsection (3) to implement a component of the [school's] school

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improvement plan described under Subsection 53A-1a-108.5(2), including:

~~[(i)]~~ (A) the school's identified most critical academic needs;

~~[(ii)]~~ (B) a recommended course of action to meet the identified academic needs;

~~[(iii)]~~ (C) a specific listing of any programs, practices, materials, or equipment which the school will need to implement a component of its school improvement plan to have a direct impact on the instruction of students and result in measurable increased student performance; and

~~[(iv)]~~ (D) how the school intends to spend its allocation of funds under this section to enhance or improve academic excellence at the school.

(ii) A school community council or its subcommittee may not use its allocation under Subsection (3) to supplant other state, federal, or local funds that would otherwise be available for a school's educational programs.

(b) (i) A school community council shall create and vote to adopt a plan for the use of School LAND Trust Program money in a meeting of the school community council at which a quorum is present.

(ii) If a majority of the quorum votes to adopt a plan for the use of School LAND Trust Program money, the plan is adopted.

(c) A school community council shall:

(i) post a plan for the use of School LAND Trust Program money that is adopted in accordance with Subsection (5)(b) on the School LAND Trust Program website; and

(ii) include with the plan a report noting the number of school community council members who voted for or against the approval of the plan and the number of members who were absent for the vote.

(d) (i) A school's local school board shall approve or disapprove a plan for the use of School LAND Trust Program money.

(ii) If a local school board disapproves a plan for the use of School LAND Trust Program money, the local school board shall provide a written explanation of why the plan was disapproved and request the school community council who submitted the plan to revise the plan.

(iii) The school community council shall submit a revised plan to the local school board for approval.

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(6) (a) Each school shall:

(i) implement the program as approved;

(ii) provide ongoing support for the council's program; and

(iii) meet State Board of Education reporting requirements regarding financial and performance accountability of the program.

(b) (i) Each school, through its school community council, shall prepare and post an annual report of the program on the School LAND Trust Program website each fall.

(ii) The report shall detail the use of program funds received by the school under this section and an assessment of the results obtained from the use of the funds.

(iii) A summary of the report shall be provided to parents or guardians of students attending the school.

(7) (a) The governing board of a charter school shall establish a council, which shall prepare a plan for the use of School LAND Trust Program money that includes the elements listed in Subsection (5).

(b) (i) The membership of the council shall include parents or guardians of students enrolled at the school and may include other members.

(ii) The number of council members who are parents or guardians of students enrolled at the school shall exceed all other members combined by at least two.

(c) A charter school governing board may serve as the council that prepares a plan for the use of School LAND Trust Program money if the membership of the charter school governing board meets the requirements of Subsection (7)(b)(ii).

(d) (i) Except as provided in Subsection (7)(d)(ii), council members who are parents or guardians of students enrolled at the school shall be elected in accordance with procedures established by the charter school governing board.

(ii) Subsection (7)(d)(i) does not apply to a charter school governing board that serves as the council that prepares a plan for the use of School LAND Trust Program money.

(e) A parent or guardian of a student enrolled at the school shall serve as chair or cochair of a council that prepares a plan for the use of School LAND Trust Program money.

(f) A plan for the use of School LAND Trust Program money shall be subject to approval by the charter school governing board and the entity that authorized the establishment of the charter school.

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Section 5. Section **53A-17a-103** is amended to read:

### **53A-17a-103. Definitions.**

As used in this chapter:

(1) "Basic state-supported school program" or "basic program" means public education programs for kindergarten, elementary, and secondary school students that are operated and maintained for the amount derived by multiplying the number of weighted pupil units for each school district or charter school by the value established each year in statute, except as otherwise provided in this chapter.

(2) (a) "Certified revenue levy" means a property tax levy that provides an amount of ad valorem property tax revenue equal to the sum of:

(i) the amount of ad valorem property tax revenue to be generated statewide in the previous year from imposing a minimum basic tax rate, as specified in [~~Subsection~~] Section 53A-17a-135~~[(1)(a)]~~; and

(ii) the product of:

(A) new growth, as defined in:

(I) Section 59-2-924; and

(II) rules of the State Tax Commission; and

(B) the minimum basic tax rate certified by the State Tax Commission for the previous year.

(b) For purposes of this Subsection (2), "ad valorem property tax revenue" does not include property tax revenue received statewide from personal property that is:

(i) assessed by a county assessor in accordance with Title 59, Chapter 2, Part 3, County Assessment; and

(ii) semiconductor manufacturing equipment.

(c) For purposes of calculating the certified revenue levy described in this Subsection (2), the State Tax Commission shall use:

(i) the taxable value of real property assessed by a county assessor contained on the assessment roll;

(ii) the taxable value of real and personal property assessed by the State Tax Commission; and

(iii) the taxable year end value of personal property assessed by a county assessor

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contained on the prior year's assessment roll.

(3) "Pupil in average daily membership (ADM)" means a full-day equivalent pupil.

(4) (a) "State-supported minimum school program" or "Minimum School Program" means public school programs for kindergarten, elementary, and secondary schools as described in this Subsection (4).

(b) The minimum school program established in school districts and charter schools shall include the equivalent of a school term of nine months as determined by the State Board of Education.

(c) (i) The board shall establish the number of days or equivalent instructional hours that school is held for an academic school year.

(ii) Education, enhanced by utilization of technologically enriched delivery systems, when approved by local school boards or charter school governing boards, shall receive full support by the State Board of Education as it pertains to fulfilling the attendance requirements, excluding time spent viewing commercial advertising.

(d) The Minimum School Program includes a program or allocation funded by a line item appropriation or other appropriation designated as follows:

- (i) Basic School Program;
- (ii) Related to Basic Programs;
- (iii) Voted and Board Levy Programs; or
- (iv) Minimum School Program.

(5) "Weighted pupil unit or units or WPU or WPUs" means the unit of measure of factors that is computed in accordance with this chapter for the purpose of determining the costs of a program on a uniform basis for each district.

Section 6. Section **53A-17a-135** is amended to read:

### **53A-17a-135. Minimum basic tax rate -- Certified revenue levy.**

(1) ~~As~~ (a) Except as provided in Subsection (1)(b), as used in this section, "basic levy increment rate" means a rate equal to the lesser of:

(i) the difference between:

(~~a~~) ~~the minimum basic tax~~ a rate ~~provided in Subsection (2)~~ of .001691; and

(~~b~~) B) the certified revenue levy ~~;~~; and

(ii) a rate that:

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(A) provides an amount of ad valorem property tax revenue equal to \$100,000,000; and

(B) is calculated in the same manner as the certified revenue levy.

(b) If the difference calculated in Subsection (1)(a)(i) is less than zero, "basic levy increment rate" means a rate equal to the rate described in Subsection (1)(a)(ii).

~~[(+)] (2) (a)~~ In order to qualify for receipt of the state contribution toward the basic program and as its contribution toward its costs of the basic program, each school district shall impose a minimum basic tax rate per dollar of taxable value ~~[that generates \$294,092,000 in revenues statewide]~~ in accordance with this section.

~~[(b) The preliminary estimate for the 2013-14 minimum basic tax rate is .001691.]~~

~~[(c) The State Tax Commission shall certify on or before June 22 the rate that generates \$294,092,000 in revenues statewide.]~~

~~[(d) If the minimum basic tax rate exceeds the certified revenue levy as defined in Section 53A-17a-103, the state is subject to the notice requirements of Section 59-2-926.]~~

(b) ~~{Beginning}~~ Except as provided in Subsection (2)(c), beginning on January 1, 2014, the minimum basic tax rate is the greater of:

(i) the certified revenue levy; or

(ii) a tax rate of .001691.

(c) If the basic levy increment rate is equal to a rate described in Subsection (1)(a)(ii), the minimum basic tax rate is a rate equal to the sum of:

(i) the certified revenue levy; and

(ii) the basic levy increment rate.

(3) (a) On or before June 8, the State Tax Commission shall provide the State Board of Education and each school district with an initial estimate of:

(i) the minimum basic tax rate to be imposed under Subsection (2); and

(ii) the basic levy increment rate.

(b) On or before June 22, the State Tax Commission shall certify:

(i) the minimum basic tax rate to be imposed under Subsection (2); and

(ii) the basic levy increment rate.

~~[(2)] (4) (a)~~ The state shall contribute to each district toward the cost of the basic program in the district that portion which exceeds the proceeds of ~~[the levy authorized under Subsection (1).]~~ the difference between:



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(i) the minimum basic tax rate imposed under Subsection (2); and

(ii) the basic levy increment rate.

(b) In accord with the state strategic plan for public education and to fulfill its responsibility for the development and implementation of that plan, the Legislature instructs the State Board of Education, the governor, and the Office of Legislative Fiscal Analyst in each of the coming five years to develop budgets that will fully fund student enrollment growth.

~~[(3)]~~ (5) (a) If the [proceeds of the levy authorized under Subsection (1) equal or exceed] difference described in Subsection (4)(a) equals or exceeds the cost of the basic program in a school district, no state contribution shall be made to the basic program.

(b) The proceeds of ~~[the levy authorized under Subsection (1) which]~~ the difference described in Subsection (4)(a) that exceed the cost of the basic program shall be paid into the Uniform School Fund as provided by law.

(6) The State Board of Education shall:

(a) deduct from state funds that a school district is authorized to receive under this chapter an amount equal to the proceeds generated within the school district by the basic levy increment rate; and

(b) deposit the money described in Subsection (6)(a) into the Minimum Basic Growth Account created in Section 53A-16-101.

Section 7. Section **59-2-102** is amended to read:

### **59-2-102. Definitions.**

As used in this chapter and title:

(1) "Aerial applicator" means aircraft or rotorcraft used exclusively for the purpose of engaging in dispensing activities directly affecting agriculture or horticulture with an airworthiness certificate from the Federal Aviation Administration certifying the aircraft or rotorcraft's use for agricultural and pest control purposes.

(2) "Air charter service" means an air carrier operation which requires the customer to hire an entire aircraft rather than book passage in whatever capacity is available on a scheduled trip.

(3) "Air contract service" means an air carrier operation available only to customers who engage the services of the carrier through a contractual agreement and excess capacity on any trip and is not available to the public at large.

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(4) "Aircraft" is as defined in Section 72-10-102.

(5) (a) Except as provided in Subsection (5)(b), "airline" means an air carrier that:

(i) operates:

(A) on an interstate route; and

(B) on a scheduled basis; and

(ii) offers to fly one or more passengers or cargo on the basis of available capacity on a regularly scheduled route.

(b) "Airline" does not include an:

(i) air charter service; or

(ii) air contract service.

(6) "Assessment roll" means a permanent record of the assessment of property as assessed by the county assessor and the commission and may be maintained manually or as a computerized file as a consolidated record or as multiple records by type, classification, or categories.

(7) (a) "Certified revenue levy" means a property tax levy that provides an amount of ad valorem property tax revenue equal to the sum of:

(i) the amount of ad valorem property tax revenue to be generated statewide in the previous year from imposing a school minimum basic tax rate, as specified in [~~Subsection~~ Section 53A-17a-135~~(1)(a)~~], or multicounty assessing and collecting levy, as specified in Section 59-2-1602; and

(ii) the product of:

(A) new growth, as defined in:

(I) Section 59-2-924; and

(II) rules of the commission; and

(B) the school minimum basic tax rate or multicounty assessing and collecting levy certified by the commission for the previous year.

(b) For purposes of this Subsection (7), "ad valorem property tax revenue" does not include property tax revenue received by a taxing entity from personal property that is:

(i) assessed by a county assessor in accordance with Part 3, County Assessment; and

(ii) semiconductor manufacturing equipment.

(c) For purposes of calculating the certified revenue levy described in this Subsection

## SB0111S02 compared with SB0111S01

(7), the commission shall use:

(i) the taxable value of real property assessed by a county assessor contained on the assessment roll;

(ii) the taxable value of real and personal property assessed by the commission; and

(iii) the taxable year end value of personal property assessed by a county assessor contained on the prior year's assessment roll.

(8) "County-assessed commercial vehicle" means:

(a) any commercial vehicle, trailer, or semitrailer which is not apportioned under Section 41-1a-301 and is not operated interstate to transport the vehicle owner's goods or property in furtherance of the owner's commercial enterprise;

(b) any passenger vehicle owned by a business and used by its employees for transportation as a company car or vanpool vehicle; and

(c) vehicles that are:

(i) especially constructed for towing or wrecking, and that are not otherwise used to transport goods, merchandise, or people for compensation;

(ii) used or licensed as taxicabs or limousines;

(iii) used as rental passenger cars, travel trailers, or motor homes;

(iv) used or licensed in this state for use as ambulances or hearses;

(v) especially designed and used for garbage and rubbish collection; or

(vi) used exclusively to transport students or their instructors to or from any private, public, or religious school or school activities.

(9) (a) Except as provided in Subsection (9)(b), for purposes of Section 59-2-801, "designated tax area" means a tax area created by the overlapping boundaries of only the following taxing entities:

(i) a county; and

(ii) a school district.

(b) Notwithstanding Subsection (9)(a), "designated tax area" includes a tax area created by the overlapping boundaries of:

(i) the taxing entities described in Subsection (9)(a); and

(ii) (A) a city or town if the boundaries of the school district under Subsection (9)(a) and the boundaries of the city or town are identical; or

## **SB0111S02 compared with SB0111S01**

(B) a special service district if the boundaries of the school district under Subsection (9)(a) are located entirely within the special service district.

(10) "Eligible judgment" means a final and unappealable judgment or order under Section 59-2-1330:

(a) that became a final and unappealable judgment or order no more than 14 months prior to the day on which the notice required by Section 59-2-919.1 is required to be mailed; and

(b) for which a taxing entity's share of the final and unappealable judgment or order is greater than or equal to the lesser of:

(i) \$5,000; or

(ii) 2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year.

(11) (a) "Escaped property" means any property, whether personal, land, or any improvements to the property, subject to taxation and is:

(i) inadvertently omitted from the tax rolls, assigned to the incorrect parcel, or assessed to the wrong taxpayer by the assessing authority;

(ii) undervalued or omitted from the tax rolls because of the failure of the taxpayer to comply with the reporting requirements of this chapter; or

(iii) undervalued because of errors made by the assessing authority based upon incomplete or erroneous information furnished by the taxpayer.

(b) Property that is undervalued because of the use of a different valuation methodology or because of a different application of the same valuation methodology is not "escaped property."

(12) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

(13) "Farm machinery and equipment," for purposes of the exemption provided under

## **SB0111S02 compared with SB0111S01**

Section 59-2-1101, means tractors, milking equipment and storage and cooling facilities, feed handling equipment, irrigation equipment, harvesters, choppers, grain drills and planters, tillage tools, scales, combines, spreaders, sprayers, haying equipment, and any other machinery or equipment used primarily for agricultural purposes; but does not include vehicles required to be registered with the Motor Vehicle Division or vehicles or other equipment used for business purposes other than farming.

(14) "Geothermal fluid" means water in any form at temperatures greater than 120 degrees centigrade naturally present in a geothermal system.

(15) "Geothermal resource" means:

(a) the natural heat of the earth at temperatures greater than 120 degrees centigrade;

and

(b) the energy, in whatever form, including pressure, present in, resulting from, created by, or which may be extracted from that natural heat, directly or through a material medium.

(16) (a) "Goodwill" means:

(i) acquired goodwill that is reported as goodwill on the books and records:

(A) of a taxpayer; and

(B) that are maintained for financial reporting purposes; or

(ii) the ability of a business to:

(A) generate income:

(I) that exceeds a normal rate of return on assets; and

(II) resulting from a factor described in Subsection (16)(b); or

(B) obtain an economic or competitive advantage resulting from a factor described in

Subsection (16)(b).

(b) The following factors apply to Subsection (16)(a)(ii):

(i) superior management skills;

(ii) reputation;

(iii) customer relationships;

(iv) patronage; or

(v) a factor similar to Subsections (16)(b)(i) through (iv).

(c) "Goodwill" does not include:

(i) the intangible property described in Subsection (20)(a) or (b);

## SB0111S02 compared with SB0111S01

(ii) locational attributes of real property, including:

- (A) zoning;
- (B) location;
- (C) view;
- (D) a geographic feature;
- (E) an easement;
- (F) a covenant;
- (G) proximity to raw materials;
- (H) the condition of surrounding property; or
- (I) proximity to markets;

(iii) value attributable to the identification of an improvement to real property,

including:

- (A) reputation of the designer, builder, or architect of the improvement;
- (B) a name given to, or associated with, the improvement; or
- (C) the historic significance of an improvement; or
- (iv) the enhancement or assemblage value specifically attributable to the interrelation

of the existing tangible property in place working together as a unit.

(17) "Governing body" means:

- (a) for a county, city, or town, the legislative body of the county, city, or town;
- (b) for a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, the local district's board of trustees;
- (c) for a school district, the local board of education; or
- (d) for a special service district under Title 17D, Chapter 1, Special Service District Act:

Act:

(i) the legislative body of the county or municipality that created the special service district, to the extent that the county or municipal legislative body has not delegated authority to an administrative control board established under Section 17D-1-301; or

(ii) the administrative control board, to the extent that the county or municipal legislative body has delegated authority to an administrative control board established under Section 17D-1-301.

(18) (a) For purposes of Section 59-2-103:

## **SB0111S02 compared with SB0111S01**

(i) "household" means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses; and

(ii) "household" includes married individuals, who are not legally separated, that have established domiciles at separate locations within the state.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the term "domicile."

(19) (a) Except as provided in Subsection (19)(c), "improvement" means a building, structure, fixture, fence, or other item that is permanently attached to land, regardless of whether the title has been acquired to the land, if:

(i) (A) attachment to land is essential to the operation or use of the item; and

(B) the manner of attachment to land suggests that the item will remain attached to the land in the same place over the useful life of the item; or

(ii) removal of the item would:

(A) cause substantial damage to the item; or

(B) require substantial alteration or repair of a structure to which the item is attached.

(b) "Improvement" includes:

(i) an accessory to an item described in Subsection (19)(a) if the accessory is:

(A) essential to the operation of the item described in Subsection (19)(a); and

(B) installed solely to serve the operation of the item described in Subsection (19)(a);

and

(ii) an item described in Subsection (19)(a) that:

(A) is temporarily detached from the land for repairs; and

(B) remains located on the land.

(c) Notwithstanding Subsections (19)(a) and (b), "improvement" does not include:

(i) an item considered to be personal property pursuant to rules made in accordance with Section 59-2-107;

(ii) a moveable item that is attached to land:

(A) for stability only; or

(B) for an obvious temporary purpose;

(iii) (A) manufacturing equipment and machinery; or

(B) essential accessories to manufacturing equipment and machinery;

## **SB0111S02 compared with SB0111S01**

(iv) an item attached to the land in a manner that facilitates removal without substantial damage to:

(A) the land; or

(B) the item; or

(v) a transportable factory-built housing unit as defined in Section 59-2-1502 if that transportable factory-built housing unit is considered to be personal property under Section 59-2-1503.

(20) "Intangible property" means:

(a) property that is capable of private ownership separate from tangible property,

including:

(i) money;

(ii) credits;

(iii) bonds;

(iv) stocks;

(v) representative property;

(vi) franchises;

(vii) licenses;

(viii) trade names;

(ix) copyrights; and

(x) patents;

(b) a low-income housing tax credit;

(c) goodwill; or

(d) a renewable energy tax credit or incentive, including:

(i) a federal renewable energy production tax credit under Section 45, Internal Revenue Code;

(ii) a federal energy credit for qualified renewable electricity production facilities under Section 48, Internal Revenue Code;

(iii) a federal grant for a renewable energy property under American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, Section 1603; and

(iv) a tax credit under Subsection 59-7-614(2)(c).

(21) "Low-income housing tax credit" means:



## **SB0111S02 compared with SB0111S01**

(a) a federal low-income housing tax credit under Section 42, Internal Revenue Code;

or

(b) a low-income housing tax credit under:

(i) Section 59-7-607; or

(ii) Section 59-10-1010.

(22) "Metalliferous minerals" includes gold, silver, copper, lead, zinc, and uranium.

(23) "Mine" means a natural deposit of either metalliferous or nonmetalliferous valuable mineral.

(24) "Mining" means the process of producing, extracting, leaching, evaporating, or otherwise removing a mineral from a mine.

(25) (a) "Mobile flight equipment" means tangible personal property that is:

(i) owned or operated by an:

(A) air charter service;

(B) air contract service; or

(C) airline; and

(ii) (A) capable of flight;

(B) attached to an aircraft that is capable of flight; or

(C) contained in an aircraft that is capable of flight if the tangible personal property is intended to be used:

(I) during multiple flights;

(II) during a takeoff, flight, or landing; and

(III) as a service provided by an air charter service, air contract service, or airline.

(b) (i) "Mobile flight equipment" does not include a spare part other than a spare engine that is rotated:

(A) at regular intervals; and

(B) with an engine that is attached to the aircraft.

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the term "regular intervals."

(26) "Nonmetalliferous minerals" includes, but is not limited to, oil, gas, coal, salts, sand, rock, gravel, and all carboniferous materials.

(27) "Personal property" includes:

## **SB0111S02 compared with SB0111S01**

(a) every class of property as defined in Subsection (28) that is the subject of ownership and not included within the meaning of the terms "real estate" and "improvements";

(b) gas and water mains and pipes laid in roads, streets, or alleys;

(c) bridges and ferries;

(d) livestock, which, for the purposes of the exemption provided under Section 59-2-1112, means all domestic animals, honeybees, poultry, fur-bearing animals, and fish; and

(e) outdoor advertising structures as defined in Section 72-7-502.

(28) (a) "Property" means property that is subject to assessment and taxation according to its value.

(b) "Property" does not include intangible property as defined in this section.

(29) "Public utility," for purposes of this chapter, means the operating property of a railroad, gas corporation, oil or gas transportation or pipeline company, coal slurry pipeline company, electrical corporation, telephone corporation, sewerage corporation, or heat corporation where the company performs the service for, or delivers the commodity to, the public generally or companies serving the public generally, or in the case of a gas corporation or an electrical corporation, where the gas or electricity is sold or furnished to any member or consumers within the state for domestic, commercial, or industrial use. Public utility also means the operating property of any entity or person defined under Section 54-2-1 except water corporations.

(30) (a) Subject to Subsection (30)(b), "qualifying exempt primary residential rental personal property" means household furnishings, furniture, and equipment that:

(i) are used exclusively within a dwelling unit that is the primary residence of a tenant;

(ii) are owned by the owner of the dwelling unit that is the primary residence of a tenant; and

(iii) after applying the residential exemption described in Section 59-2-103, are exempt from taxation under this chapter in accordance with Subsection 59-2-1115(2).

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "dwelling unit" for purposes of this Subsection (30) and Subsection (33).

(31) "Real estate" or "real property" includes:

(a) the possession of, claim to, ownership of, or right to the possession of land;

## **SB0111S02 compared with SB0111S01**

(b) all mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations growing or being on the lands of this state or the United States, and all rights and privileges appertaining to these; and

(c) improvements.

(32) "Relationship with an owner of the property's land surface rights" means a relationship described in Subsection 267(b), Internal Revenue Code:

(a) except that notwithstanding Subsection 267(b), Internal Revenue Code, the term 25% shall be substituted for the term 50% in Subsection 267(b), Internal Revenue Code; and

(b) using the ownership rules of Subsection 267(c), Internal Revenue Code, for determining the ownership of stock.

(33) (a) Subject to Subsection (33)(b), "residential property," for the purposes of the reductions and adjustments under this chapter, means any property used for residential purposes as a primary residence.

(b) Subject to Subsection (33)(c), "residential property":

(i) except as provided in Subsection (33)(b)(ii), includes household furnishings, furniture, and equipment if the household furnishings, furniture, and equipment are:

(A) used exclusively within a dwelling unit that is the primary residence of a tenant;  
and

(B) owned by the owner of the dwelling unit that is the primary residence of a tenant;  
and

(ii) does not include property used for transient residential use.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "dwelling unit" for purposes of Subsection (30) and this Subsection (33).

(34) "Split estate mineral rights owner" means a person who:

(a) has a legal right to extract a mineral from property;

(b) does not hold more than a 25% interest in:

(i) the land surface rights of the property where the wellhead is located; or

(ii) an entity with an ownership interest in the land surface rights of the property where the wellhead is located;

(c) is not an entity in which the owner of the land surface rights of the property where

## SB0111S02 compared with SB0111S01

the wellhead is located holds more than a 25% interest; and

(d) does not have a relationship with an owner of the land surface rights of the property where the wellhead is located.

(35) (a) "State-assessed commercial vehicle" means:

(i) any commercial vehicle, trailer, or semitrailer which operates interstate or intrastate to transport passengers, freight, merchandise, or other property for hire; or

(ii) any commercial vehicle, trailer, or semitrailer which operates interstate and transports the vehicle owner's goods or property in furtherance of the owner's commercial enterprise.

(b) "State-assessed commercial vehicle" does not include vehicles used for hire which are specified in Subsection (8)(c) as county-assessed commercial vehicles.

(36) "Taxable value" means fair market value less any applicable reduction allowed for residential property under Section 59-2-103.

(37) "Tax area" means a geographic area created by the overlapping boundaries of one or more taxing entities.

(38) "Taxing entity" means any county, city, town, school district, special taxing district, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or other political subdivision of the state with the authority to levy a tax on property.

(39) "Tax roll" means a permanent record of the taxes charged on property, as extended on the assessment roll and may be maintained on the same record or records as the assessment roll or may be maintained on a separate record properly indexed to the assessment roll. It includes tax books, tax lists, and other similar materials.

Section 8. Section **59-2-926** is amended to read:

### **59-2-926. Proposed tax increase by state -- Notice -- Contents -- Dates.**

If the state authorizes a levy pursuant to [~~Section 53A-17a-135 that exceeds the certified revenue levy as defined in Section 53A-17a-103 or authorizes a levy pursuant to~~] Section 59-2-1602 that exceeds the certified revenue levy as defined in Section 59-2-102, the state shall publish a notice no later than 10 days after the last day of the annual legislative general session that meets the following requirements:

(1) (a) The Office of the Legislative Fiscal Analyst shall advertise that the state authorized a levy that generates revenue in excess of the previous year's ad valorem tax

## SB0111S02 compared with SB0111S01

revenue, plus new growth, but exclusive of revenue from collections from redemptions, interest, and penalties:

- (i) in a newspaper of general circulation in the state; and
- (ii) as required in Section 45-1-101.

(b) Except an advertisement published on a website, the advertisement described in Subsection (1)(a):

(i) shall be no less than 1/4 page in size and the type used shall be no smaller than 18 point, and surrounded by a 1/4-inch border:

(ii) may not be placed in that portion of the newspaper where legal notices and classified advertisements appear; and

(iii) shall be run once.

(2) The form and content of the notice shall be substantially as follows:

### "NOTICE OF TAX INCREASE

The state has budgeted an increase in its property tax revenue from \$ \_\_\_\_\_ to \$ \_\_\_\_\_ or \_\_\_\_%. The increase in property tax revenues will come from the following sources (include all of the following provisions):

(a) \$ \_\_\_\_\_ of the increase will come from (provide an explanation of the cause of adjustment or increased revenues, such as reappraisals or factoring orders);

(b) \$ \_\_\_\_\_ of the increase will come from natural increases in the value of the tax base due to (explain cause of new growth, such as new building activity, annexation, etc.);

(c) a home valued at \$100,000 in the state of Utah which based on last year's [~~levy for the basic state-supported school program,~~] levy for the Property Tax Valuation Agency Fund, [~~or both~~] paid \$ \_\_\_\_\_ in property taxes would pay the following:

(i) \$ \_\_\_\_\_ if the state of Utah did not budget an increase in property tax revenue exclusive of new growth; and

(ii) \$ \_\_\_\_\_ under the increased property tax revenues exclusive of new growth budgeted by the state of Utah."

### Section 9. **Repealer.**

This bill repeals:

Section **53A-17a-131.17, State contribution for School LAND Trust Program.**

### Section 10. **Retrospective operation.**

**SB0111S02 compared with SB0111S01**

This bill has retrospective operation to January 1, 2014.