

# HB0431S01 compared with HB0431

~~text~~ shows text that was in HB0431 but was deleted in HB0431S01.

inserted text shows text that was not in HB0431 but was inserted into HB0431S01.

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Senator Todd Weiler proposes the following substitute bill:

## AFFORDABLE HOUSING REVISIONS

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Rebecca P. Edwards**

Senate Sponsor: ~~\_\_\_\_\_~~ Todd Weiler

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### LONG TITLE

#### General Description:

This bill modifies provisions related to ~~the Public Transit District Act~~ affordable housing and transit-oriented development.

#### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires public transit districts to adopt transit-oriented development policies that include affordable housing; ~~and~~
- ▶ creates the Economic Revitalization and Investment Enterprise Fund;
- ▶ establishes requirements for the distribution of money from the fund; and
- ▶ makes technical and conforming changes.

#### Money Appropriated in this Bill:

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None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**17B-2a-802**, as last amended by Laws of Utah 2011, Chapter 146

**17B-2a-804**, as last amended by Laws of Utah 2014, Chapter 377

[35A-8-501, as renumbered and amended by Laws of Utah 2012, Chapter 212](#)

[35A-8-506, as renumbered and amended by Laws of Utah 2012, Chapter 212](#)

#### ENACTS:

[35A-8-509, Utah Code Annotated 1953](#)

[35A-8-510, Utah Code Annotated 1953](#)

[35A-8-511, Utah Code Annotated 1953](#)

[35A-8-512, Utah Code Annotated 1953](#)

[35A-8-513, Utah Code Annotated 1953](#)

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

Section 1. Section **17B-2a-802** is amended to read:

#### **17B-2a-802. Definitions.**

As used in this part:

(1) "Affordable housing" means housing occupied or reserved for occupancy by households that meet certain gross household income requirements based on the area median income for households of the same size.

(a) "Affordable housing" may include housing occupied or reserved for occupancy by households that meet specific area median income targets or ranges of area median income targets.

(b) "Affordable housing" does not include housing occupied or reserved for occupancy by households with gross household incomes that are more than 60% of the area median income for households of the same size.

[+] (2) "Appointing entity" means the person, county, unincorporated area of a county, or municipality appointing a member to a public transit district board of trustees.

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~~[(2)]~~ (3) (a) "Chief executive officer" means a person appointed by the board of trustees to serve as chief executive officer.

(b) "Chief executive officer" shall enjoy all the rights, duties, and responsibilities defined in Sections 17B-2a-810 and 17B-2a-811 and includes all rights, duties, and responsibilities assigned to the general manager but prescribed by the board of trustees to be fulfilled by the chief executive officer.

~~[(3)]~~ (4) "Department" means the Department of Transportation created in Section 72-1-201.

~~[(4)]~~ (5) (a) "General manager" means a person appointed by the board of trustees to serve as general manager.

(b) "General manager" shall enjoy all the rights, duties, and responsibilities defined in Sections 17B-2a-810 and 17B-2a-811 prescribed by the board of trustees.

~~[(5)]~~ (6) (a) "Locally elected public official" means a person who holds an elected position with a county or municipality.

(b) "Locally elected public official" does not include a person who holds an elected position if the elected position is not with a county or municipality.

(7) "Metropolitan planning organization" means the same as that term is defined in Section 72-1-208.5.

~~[(6)]~~ (8) "Multicounty district" means a public transit district located in more than one county.

~~[(7)]~~ (9) "Operator" means a public entity or other person engaged in the transportation of passengers for hire.

~~[(8)]~~ (10) "Public transit" means the transportation of passengers only and their incidental baggage by means other than:

- (a) chartered bus;
- (b) sightseeing bus; or
- (c) taxi.

~~[(9)]~~ (11) "Transit facility" means a transit vehicle, transit station, depot, passenger loading or unloading zone, parking lot, or other facility:

- (a) leased by or operated by or on behalf of a public transit district; and
- (b) related to the public transit services provided by the district, including:

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- (i) railway or other right-of-way;
- (ii) railway line; and
- (iii) a reasonable area immediately adjacent to a designated stop on a route traveled by a transit vehicle.

~~[(10) "Transit-oriented development" means a mixed-use residential or commercial area that is designed to maximize access to public transit.]~~

(12) "Transit-oriented development" means a mixed use residential or commercial area that is designed to maximize access to public transit and includes the development of land owned by a public transit district that serves a county of the first class.

(13) "Transit-supportive development" means a mixed use residential or commercial area that is designed to maximize access to public transit and does not include the development of land owned by a public transit district.

~~[(11)]~~ (14) "Transit vehicle" means a passenger bus, coach, railcar, van, or other vehicle operated as public transportation by a public transit district.

Section 2. Section **17B-2a-804** is amended to read:

### **17B-2a-804. Additional public transit district powers.**

(1) In addition to the powers conferred on a public transit district under Section 17B-1-103, a public transit district may:

(a) provide a public transit system for the transportation of passengers and their incidental baggage;

(b) notwithstanding Subsection 17B-1-103(2)(g) and subject to Section 17B-2a-817, levy and collect property taxes only for the purpose of paying:

(i) principal and interest of bonded indebtedness of the public transit district; or

(ii) a final judgment against the public transit district if:

(A) the amount of the judgment exceeds the amount of any collectable insurance or indemnity policy; and

(B) the district is required by a final court order to levy a tax to pay the judgment;

(c) insure against:

(i) loss of revenues from damage to or destruction of some or all of a public transit system from any cause;

(ii) public liability;

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- (iii) property damage; or
- (iv) any other type of event, act, or omission;
- (d) acquire, contract for, lease, construct, own, operate, control, or use:
  - (i) a right-of-way, rail line, monorail, bus line, station, platform, switchyard, terminal, parking lot, or any other facility necessary or convenient for public transit service; or
  - (ii) any structure necessary for access by persons and vehicles;
- (e) (i) hire, lease, or contract for the supplying or management of a facility, operation, equipment, service, employee, or management staff of an operator; and
  - (ii) provide for a sublease or subcontract by the operator upon terms that are in the public interest;
- (f) operate feeder bus lines and other feeder or ridesharing services as necessary;
- (g) accept a grant, contribution, or loan, directly through the sale of securities or equipment trust certificates or otherwise, from the United States, or from a department, instrumentality, or agency of the United States;
- (h) study and plan transit facilities in accordance with any legislation passed by Congress;
- (i) cooperate with and enter into an agreement with the state or an agency of the state or otherwise contract to finance to establish transit facilities and equipment or to study or plan transit facilities;
- (j) issue bonds as provided in and subject to Chapter 1, Part 11, Local District Bonds, to carry out the purposes of the district;
- (k) from bond proceeds or any other available funds, reimburse the state or an agency of the state for an advance or contribution from the state or state agency;
- (l) do anything necessary to avail itself of any aid, assistance, or cooperation available under federal law, including complying with labor standards and making arrangements for employees required by the United States or a department, instrumentality, or agency of the United States;
- (m) sell or lease property;
- (n) assist in or operate transit-oriented or transit-supportive developments;
- (o) establish, finance, participate as a limited partner or member in a development with limited liabilities in accordance with Subsection (1)(p), construct, improve, maintain, or

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operate transit facilities, equipment, and transit-oriented developments or transit-supportive developments; and

(p) subject to the restriction in Subsection (2), assist in a transit-oriented development or a transit-supportive development in connection with economic development or community development as defined in Section 17C-1-102 by:

(i) investing in a project as a limited partner or a member, with limited liabilities; or

(ii) subordinating an ownership interest in real property owned by the public transit district.

(2) (a) A public transit district may only assist in the [~~economic~~] development of areas under Subsection (1)(p):

(i) in the manner described in Subsection (1)(p)(i) or (ii); and

(ii) on no more than eight transit-oriented developments or transit-supportive developments selected by the board of trustees.

(b) A public transit district may not invest in a transit-oriented development or transit-supportive development as a limited partner or other limited liability entity under the provisions of Subsection (1)(p)(i), unless the partners, developer, or other investor in the entity, makes an equity contribution equal to no less than 25% of the appraised value of the property to be contributed by the public transit district.

(c) (i) For transit-oriented development projects, a public transit district shall adopt transit-oriented development policies and guidelines that include provisions on affordable housing.

(ii) For transit-supportive development projects, a public transit district shall work with the metropolitan planning organization and city and county governments where the project is located to collaboratively seek to create joint plans for the areas within one-half mile of transit stations, including plans for affordable housing.

~~(c)~~ (d) A current board member of a public transit district to which the board member is appointed may not have any interest in the transactions engaged in by the public transit district pursuant to Subsection (1)(p)(i) or (ii), except as may be required by the board member's fiduciary duty as a board member.

(3) A public transit district may be funded from any combination of federal, state, local, or private funds.

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(4) A public transit district may not acquire property by eminent domain.

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### Legislative Review Note

~~Office of Legislative Research and General Counsel~~ Section 3. Section 35A-8-501 is amended to read:

#### 35A-8-501. Definitions.

##### As used in this part:

(1) "Affordable housing" means housing occupied or reserved for occupancy by households whose incomes are at or below certain income requirements at rental rates affordable to such households.

[(1)] (2) "Board" means the Housing Board created by this part.

[(2)] (3) "Fund" means the Olene Walker Housing Loan Fund created by this part.

(4) (a) "Housing sponsor" means a person who constructs, develops, rehabilitates, purchases, or owns a housing development that is or will be subject to legally enforceable restrictive covenants that require the housing development to provide, at least in part, affordable housing.

(b) "Housing sponsor" may include:

(i) a local public body;

(ii) a nonprofit, limited profit, or for profit corporation;

(iii) a limited partnership;

(iv) a limited liability company;

(v) a joint venture;

(vi) a subsidiary of the Utah Housing Corporation;

(vii) a cooperative;

(viii) a mutual housing organization;

(ix) a local government;

(x) a local housing authority;

(xi) a regional or statewide nonprofit housing or assistance organization; or

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(xii) any other entity that helps provide affordable housing.

(5) "Revitalization fund" means the Economic Revitalization and Investment Enterprise Fund created in Section 35A-8-509.

[~~(3)~~] (6) "Rural" means a county in the state other than Utah, Salt Lake, Davis, or Weber.

Section 4. Section 35A-8-506 is amended to read:

### 35A-8-506. Entities authorized to receive fund money.

[~~(1)~~] The executive director, with the approval of the board, may grant or lend fund money to a housing [sponsors] sponsor.

[~~(2) "Housing sponsor" includes a person who constructs, develops, rehabilitates, purchases, or owns a housing development that is or will be subject to legally enforceable restrictive covenants that require the housing development to provide, at least in part, residential housing to low and moderate income persons.~~]

[~~(3) A housing sponsor includes:~~]

[~~(a) a local public body;~~]

[~~(b) a nonprofit, limited profit, or for profit corporation;~~]

[~~(c) a limited partnership;~~]

[~~(d) a limited liability company;~~]

[~~(e) a joint venture;~~]

[~~(f) a subsidiary of the Utah Housing Corporation or any subsidiary of the subsidiary of the Utah Housing Corporation;~~]

[~~(g) a cooperative;~~]

[~~(h) a mutual housing organization;~~]

[~~(i) a local government;~~]

[~~(j) a local housing authority;~~]

[~~(k) a regional or statewide nonprofit housing or assistance organization; or~~]

[~~(l) any other type of entity or arrangement that helps provide affordable housing for low and moderate income persons.~~]

Section 5. Section 35A-8-509 is enacted to read:

### 35A-8-509. Economic Revitalization and Investment Enterprise Fund.

(1) (a) There is created an enterprise fund known as the "Economic Revitalization and



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Investment Enterprise Fund" administered by the executive director or the executive director's designee.

(b) The department is the administrator of the revitalization fund.

(2) The revitalization fund shall be funded by:

(a) money appropriated to the revitalization fund by the Legislature;

(b) private contributions;

(c) donations or grants from public or private entities; and

(d) money returned to the department under Section 35A-8-512.

(3) The state treasurer shall:

(a) invest the money in the revitalization fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and

(b) deposit all interest or other earnings derived from those investments into the revitalization fund.

(4) The executive director may only distribute money from the revitalization fund to fund one or more projects that:

(a) include affordable housing units for households:

(i) that make no more than 30% of the area median income for households of the same size in the area where the project is located; and

(ii) at rental rates no greater than the rates described in Subsection 35A-8-511(2)(b);

(b) have not been awarded a 9% tax credit as part of the Low Income Housing Tax Credit program administered by the United States Department of the Treasury; and

(c) have been approved by the board as described in Section 35A-8-510.

(5) (a) A housing sponsor may apply to the department to receive a distribution in accordance with Subsection (4).

(b) The application shall include:

(i) the location of the project;

(ii) the number, size, and income requirements of affordable housing units described in Subsection (4)(a) the project will include; and

(iii) a written commitment to enter into a deed restriction that reserves for a period of 30 years the affordable housing units described in Subsection (5)(b)(ii), or their equivalent, for occupancy by households that meet the income requirements described in Subsection (5)(b)(ii).

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(c) The commitment in Subsection (5)(b)(iii) shall be considered met if a housing unit is:

(i) (A) occupied or reserved for occupancy by a household that makes no more than 30% of the area median income for households of the same size in the area where the project is located; or

(B) occupied by a household that makes no more than 60% of the area median income for households of the same size in the area where the project is located, if that household met the income requirement described in Subsection (5)(c)(i)(A) when the household originally entered into the lease agreement for the housing unit; and

(ii) rented at a rate no greater than the rate described in Subsection 35A-8-511(2)(b).

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make additional rules providing procedures for a person to apply to the department to receive a distribution described in Subsection (4).

Section 6. Section 35A-8-510 is enacted to read:

### 35A-8-510. Board approval of a project.

(1) The board shall review the project applications described in Subsection 35A-8-509(5).

(2) The board may approve a project that meets the requirements of Subsections 35A-8-509(4) and (5) to receive money from the revitalization fund.

(3) The board shall give preference to projects:

(a) that include significant additional or matching funds from an individual, private organization, or local government entity;

(b) with high recipient contributions to total project costs, including allied contributions from other sources such as professional, craft, and trade services and lender interest rate subsidies;

(c) with high local government project contributions in the form of infrastructure, improvements, or other assistance;

(d) that encourage ownership, management, or other project-related responsibility opportunities;

(e) where the applicant has demonstrated the ability, stability, and resources to complete the project;

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(f) that will serve the greatest need;

(g) that promote economic development benefits;

(h) that allow integration into a local government housing plan;

(i) that would mitigate or correct existing health, safety, or welfare concerns; and

(j) that remedy a gap in the supply of and demand for affordable housing.

Section 7. Section 35A-8-511 is enacted to read:

### 35A-8-511. Activities authorized to receive revitalization fund money.

(1) Subject to appropriation, the executive director may distribute money from the revitalization fund for any of the following activities undertaken as part of an approved project:

(a) the acquisition, rehabilitation, or new construction of a building that includes affordable housing units;

(b) the purchase of land for the construction of a building that will include affordable housing units; or

(c) pre-development work, including planning, studies, design, and site work for a building that will include affordable housing units.

(2) The maximum amount of money from the revitalization fund that may be distributed for each affordable housing unit that has been committed in accordance with Subsection 35A-8-509(5)(b)(iii) is the present value, based on the current market interest rate as determined by the board for a multi-family mortgage loan in the county or metropolitan area where the project is located, of 360 monthly payments equal to the difference between:

(a) the most recent United States Department of Housing and Urban Development fair market rent for a unit of the same size in the county or metropolitan area where the project is located; and

(b) an affordable rent equal to 30% of the income requirement described in Subsection 35A-8-509(5)(b)(ii) for a household of:

(i) one person if the unit is an efficiency unit;

(ii) two people if the unit is a one-bedroom unit;

(iii) four people if the unit is a two-bedroom unit;

(iv) five people if the unit is a three-bedroom unit;

(v) six people if the unit is a four-bedroom unit; or

(vi) eight people if the unit is a five-bedroom or larger unit.

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Section 8. Section 35A-8-512 is enacted to read:

### **35A-8-512. Repayment of funds.**

(1) Upon the earlier of 30 years from the date of funding or the sale or transfer of the affordable housing units acquired, constructed, or rehabilitated as part of an approved project funded under Section 35A-8-511, the housing sponsor shall remit to the department:

(a) the total amount of money distributed by the department to the housing sponsor for the project; and

(b) an additional amount of money determined by contract with the department before the initial disbursement of funds from the revitalization fund.

(2) Any claim arising under Subsection (1) is a lien against the real property funded under this chapter.

(3) Any money returned to the department under this section shall be placed into the revitalization fund.

Section 9. Section 35A-8-513 is enacted to read:

### **35A-8-513. Annual accounting.**

(1) The executive director shall monitor the activities of a recipient of money from the revitalization fund on a yearly basis to ensure compliance with the terms and conditions imposed on the recipient by the executive director with the approval of the board.

(2) An entity that receives money from the revitalization fund shall provide the executive director with an annual accounting of how the money the entity received from the revitalization fund has been spent and evidence that the commitment described in Subsection 35A-8-509(5) has been met.

(3) The executive director shall make an annual report to the board accounting for the expenditures authorized by the board.

(4) The board shall submit a report to the department for inclusion in the annual written report described in Section 35A-1-109 that includes:

(a) an accounting for expenditures authorized by the board; and

(b) an evaluation of the effectiveness of the program.