

Senator Daniel McCay proposes the following substitute bill:

PUBLIC INFRASTRUCTURE DISTRICT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill modifies provisions in the Public Infrastructure District Act.

Highlighted Provisions:

This bill:

- ▶ modifies requirements regarding the creation of a public infrastructure district;
- ▶ allows a public infrastructure district to annex or withdraw property without the consent of the creating entity if authorized in the district's governing document;
- ▶ exempts a public infrastructure district from certain notice and hearing requirements

upon:

- levying a property tax if certain conditions are met; or
- amending a property tax levy rate limitation in the district's governing document; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **17B-2a-1202**, as enacted by Laws of Utah 2019, Chapter 490

28 **17B-2a-1204**, as enacted by Laws of Utah 2019, Chapter 490

29 **17B-2a-1205**, as enacted by Laws of Utah 2019, Chapter 490

30 **17B-2a-1207**, as enacted by Laws of Utah 2019, Chapter 490

31

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

33 Section 1. Section **17B-2a-1202** is amended to read:

34 **17B-2a-1202. Definitions.**

35 As used in this part:

36 (1) "Board" means the board of trustees of a public infrastructure district.

37 (2) "Creating entity" means the county or municipality that approves of the creation of
38 the public infrastructure district.

39 (3) "District applicant" means the person proposing the creation of the public
40 infrastructure district.

41 (4) "Division" means a division of a public infrastructure district:

42 (a) that is relatively equal in number of eligible voters or potential eligible voters to all
43 other divisions within the public infrastructure district, taking into account existing or potential
44 developments which, when completed, would increase or decrease the population within the
45 public infrastructure district; and

46 (b) which a member of the board represents.

47 (5) "Governing document" means the document governing the public infrastructure
48 district to which the creating entity agrees before the creation of the public infrastructure
49 district, as amended from time to time, and subject to the limitations of Chapter 1, Provisions
50 Applicable to All Local Districts, and this part.

51 (6) (a) "Limited tax bond" means a bond:

52 (i) that is directly payable from and secured by ad valorem property taxes that are
53 levied:

54 (A) by the public infrastructure district that issues the bond; and

55 (B) on taxable property within the district;

56 (ii) that is a general obligation of the public infrastructure district; and

57 (iii) for which the ad valorem property tax levy for repayment of the bond does not
58 exceed the [mih] property tax levy rate limit established under Section 17B-2a-1209 for any
59 fiscal year, except as provided in Subsection 17B-2a-1207(8).

60 (b) "Limited tax bond" does not include:

- 61 (i) a short-term bond;
- 62 (ii) a tax and revenue anticipation bond; or
- 63 (iii) a special assessment bond.

64 Section 2. Section 17B-2a-1204 is amended to read:

65 **17B-2a-1204. Creation -- Annexation or withdrawal of property.**

66 (1) [H] Except as provided in Subsection (2), in addition to the provisions regarding
67 creation of a local district in Chapter 1, Provisions Applicable to All Local Districts, a public
68 infrastructure district may not be created unless:

69 (a) if there are any registered voters within the applicable area, a petition is filed with
70 the creating entity that contains the signatures of 100% of registered voters within the
71 applicable area approving the creation of the public infrastructure district; and

72 (b) a petition is filed with the creating entity that contains the signatures of 100% of
73 surface property owners within the applicable area consenting to the creation of the public
74 infrastructure district.

75 (2) (a) The [election requirement of Section 17B-1-214 does] following do not apply to
76 [a petition meeting the requirements of Subsection (1)].the creation of a public infrastructure
77 district:

- 78 (i) Section 17B-1-203;
- 79 (ii) Section 17B-1-204;
- 80 (iii) Subsection 17B-1-208(2);
- 81 (iv) Section 17B-1-212; or
- 82 (v) Section 17B-1-214.

83 (b) The protest period described in Section 17B-1-213 may be waived in whole or in
84 part with the consent of:

85 (i) 100% of registered voters within the applicable area approving the creation of the
86 public infrastructure district; and

87 (ii) 100% of the surface property owners within the applicable area approving the

88 creation of the public infrastructure district.

89 (c) If the protest period is waived under Subsection (2)(b), a resolution approving the
90 creation of the public infrastructure district may be adopted in accordance with Subsection
91 17B-1-213(5).

92 (d) A petition meeting the requirements of Subsection (1):

93 (i) may be certified under Section 17B-1-209; and

94 (ii) shall be filed with the lieutenant governor in accordance with Subsection
95 17B-1-215(1)(b)(iii).

96 (3) (a) Notwithstanding Chapter 1, Part 4, Annexation, an area outside of the
97 boundaries of a public infrastructure district may be annexed into the public infrastructure
98 district after:

99 (i) (A) adoption of resolutions of the board and the creating entity, each approving of
100 the annexation; or

101 (B) adoption of a governing document that authorizes the board to annex an area
102 outside of the boundaries of the public infrastructure district without the consent of the creating
103 entity;

104 (ii) if there are any registered voters within the area proposed to be annexed, a petition
105 is filed with the creating entity that contains the signatures of 100% of registered voters within
106 the area and approves of the annexation into the public infrastructure district; and

107 (iii) a petition is filed with the creating entity that contains the signatures of 100% of
108 surface property owners within the area proposed to be annexed and consents to the annexation
109 into the public infrastructure district.

110 (b) Upon meeting the requirements of Subsection (3)(a), the board shall comply with
111 the resolution and filing requirements of Subsections 17B-1-414(1) and (2).

112 ~~[(c)-(i)]~~ (4) (a) Notwithstanding Chapter 1, Part 5, Withdrawal, property may be
113 withdrawn from a public infrastructure district after:

114 (i) (A) adoption of resolutions of the board and the creating entity, each approving of
115 the ~~annexation;~~ withdrawal; or

116 (B) adoption of a governing document that authorizes the board to withdraw property
117 from the public infrastructure district without the consent of the creating entity;

118 ~~[(B)]~~ (ii) if there are any registered voters within the area proposed to be withdrawn, a

119 petition is filed with the creating entity that contains the signatures of 100% of registered voters
120 within the area and approves of the withdrawal from the public infrastructure district; and

121 ~~[(c)]~~ (iii) a petition is filed with the creating entity that contains the signatures of 100%
122 of surface property owners within the area proposed to be withdrawn and consents to the
123 withdrawal from the public infrastructure district.

124 ~~[(ii)]~~ (b) If any bonds that the public infrastructure district issues are allocable to the
125 area to be withdrawn remain unpaid at the time of the proposed withdrawal, the property
126 remains subject to any taxes, fees, or assessments that the public infrastructure district imposes
127 until the bonds or any associated refunding bonds are paid.

128 ~~[(d)]~~ (c) Upon meeting the requirements of ~~[Subsection (3)(c)]~~ Subsections (4)(a) and
129 (b), the board shall comply with the requirements of Section 17B-1-512.

130 ~~[(4)]~~ (5) The creating entity may impose limitations on the powers of the public
131 infrastructure district through the governing document.

132 ~~[(5)]~~ (6) (a) A public infrastructure district is separate and distinct from the creating
133 entity.

134 (b) (i) Except as provided in Subsection ~~[(5)]~~ (6)(b)(ii), any financial burden of a
135 public infrastructure district:

136 (A) is borne solely by the public infrastructure district; and

137 (B) is not borne by the creating entity or any municipality, county, the state, or any
138 other political subdivision.

139 (ii) Notwithstanding Subsection ~~[(5)]~~ (6)(b)(i) and Section 17B-1-216, the governing
140 document may require:

141 (A) the district applicant to bear the initial costs of the public infrastructure district;
142 and

143 (B) the public infrastructure district to reimburse the district applicant for the initial
144 costs the creating entity bears.

145 (c) Any liability, judgment, or claim against a public infrastructure district:

146 (i) is the sole responsibility of the public infrastructure district; and

147 (ii) does not constitute a liability, judgment, or claim against the creating entity, the
148 state, or any municipality, county, or other political subdivision.

149 (d) (i) (A) The public infrastructure district solely bears the responsibility of any

150 collection, enforcement, or foreclosure proceeding with regard to any tax, fee, or assessment
151 the public infrastructure district imposes.

152 (B) The creating entity does not bear the responsibility described in Subsection [~~(5)~~]
153 (6)(d)(i)(A).

154 (ii) A public infrastructure district, and not the creating entity, shall undertake the
155 enforcement responsibility described in, as applicable, Subsection [~~(5)~~] (6)(d)(i) in accordance
156 with Title 59, Chapter 2, Property Tax Act, or Title 11, Chapter 42, Assessment Area Act.

157 [~~(6)~~] (7) The creating entity may establish criteria in determining whether to approve or
158 disapprove of the creation of a public infrastructure district, including:

- 159 (a) historical performance of the district applicant;
- 160 (b) compliance with the creating entity's master plan;
- 161 (c) credit worthiness of the district applicant;
- 162 (d) plan of finance of the public infrastructure district; and
- 163 (e) proposed development within the public infrastructure district.

164 [~~(7)~~] (8) (a) The creation of a public infrastructure district is subject to the sole
165 discretion of the creating entity responsible for approving or rejecting the creation of the public
166 infrastructure district.

167 (b) The proposed creating entity bears no liability for rejecting the proposed creation of
168 a public infrastructure district.

169 Section 3. Section **17B-2a-1205** is amended to read:

170 **17B-2a-1205. Public infrastructure district board -- Governing document.**

171 (1) The legislative body of the creating entity [~~that approves the creation of a public~~
172 ~~infrastructure district~~] shall appoint the members of the board, in accordance with the
173 governing document.

174 (2) (a) Unless otherwise limited in the governing document and except as provided in
175 Subsection (2)(b), the initial term of each member of the board is four years.

176 (b) Notwithstanding Subsection (2)(a), approximately half of the members of the initial
177 board shall serve a six-year term so that, after the expiration of the initial term, the term of
178 approximately half the board members expires every two years.

179 (c) A board may elect that a majority of the board serve an initial term of six years.

180 (d) After the initial term, the term of each member of the board is four years.

181 (3) (a) Notwithstanding Subsection 17B-1-302(1)(b), a board member is not required
182 to be a resident within the boundaries of the public infrastructure district if:

183 (i) all of the surface property owners consent to the waiver of the residency
184 requirement;

185 (ii) there are no residents within the boundaries of the public infrastructure district;

186 (iii) no qualified candidate timely files to be considered for appointment to the board;

187 or

188 (iv) no qualified individual files a declaration of candidacy for a board position in
189 accordance with Subsection 17B-1-306(4).

190 (b) Except under the circumstances described in Subsection (3)(a)(iii) or (iv), the
191 residency requirement in Subsection 17B-1-302(1)(b) is applicable to any board member
192 elected for a division or board position that has transitioned from an appointed to an elected
193 board member in accordance with this section.

194 (c) An individual who is not a resident within the boundaries of the public
195 infrastructure district may not serve as a board member unless the individual is:

196 (i) an owner of land or an agent or officer of the owner of land within the boundaries of
197 the public infrastructure district; and

198 (ii) a registered voter at the individual's primary residence.

199 (4) (a) A governing document may provide for a transition from legislative body
200 appointment under Subsection (1) to a method of election by registered voters based upon
201 milestones or events that the governing document identifies, including a milestone for each
202 division or individual board position providing that when the milestone is reached:

203 (i) for a division, the registered voters of the division elect a member of the board in
204 place of an appointed member at the next municipal general election for the board position; or

205 (ii) for an at large board position established in the governing document, the registered
206 voters of the public infrastructure district elect a member of the board in place of an appointed
207 member at the next municipal general election for the board position.

208 (b) Regardless of whether a board member is elected under Subsection (4)(a), the
209 position of each remaining board member shall continue to be appointed under Subsection (1)
210 until the member's respective division or board position surpasses the density milestone
211 described in the governing document.

212 (5) (a) Subject to Subsection (5)(c), the board may, in the board's discretion but no
213 more frequently than every four years, reestablish the boundaries of each division so that each
214 division that has reached a milestone specified in the governing document, as described in
215 Subsection (4)(a), has, as nearly as possible, the same number of eligible voters.

216 (b) In reestablishing division boundaries under Subsection (5)(a), the board shall
217 consider existing or potential developments within the divisions which, when completed,
218 would increase or decrease the number of eligible voters within the division.

219 (c) The governing document may prohibit the board from reestablishing, without the
220 consent of the creating entity, the division boundaries as described in Subsection (5)(a).

221 (6) The public infrastructure district may not compensate a board member for the
222 member's service on the board under Section 17B-1-307 unless the board member is a resident
223 within the boundaries of the public infrastructure district.

224 (7) The governing document shall:

225 (a) include a boundary description and a map of the public infrastructure district;

226 (b) state the number of board members;

227 (c) describe any divisions of the public infrastructure district;

228 (d) establish any applicable ~~[mill]~~ property tax levy rate limit for the public
229 infrastructure district;

230 (e) establish any applicable limitation on the principal amount of indebtedness for the
231 public infrastructure district; and

232 (f) include other information that the public infrastructure district or the creating entity
233 determines to be necessary or advisable.

234 (8) (a) Except as provided in Subsection (8)(b), the board and the governing body of
235 the creating entity may amend a governing document by each adopting a resolution that
236 approves the amended governing document.

237 ~~[(b) Notwithstanding Subsection (8)(a), any amendment to a property tax mill~~
238 ~~limitation requires:]~~

239 ~~[(i) before the adoption of the resolution of the creating entity described in Subsection~~
240 ~~(8)(a), the public infrastructure district to comply with the notice and public hearing~~
241 ~~requirements of Section 59-2-919, with at least one member of the governing body of the~~
242 ~~creating entity attending the public hearing required in Subsection 59-2-919(3)(a)(v) or (4)(b);~~

243 or]

244 [~~(ii) the consent of:~~]

245 [~~(A) 100% of surface property owners within the boundaries of the public~~
246 ~~infrastructure district; and]~~

247 [~~(B) 100% of the registered voters, if any, within the boundaries of the public~~
248 ~~infrastructure district.]~~

249 (b) Notwithstanding Subsection (8)(a), any amendment to a property tax levy rate
250 limitation requires the consent of:

251 (i) 100% of surface property owners within the boundaries of the public infrastructure
252 district; and

253 (ii) 100% of the registered voters, if any, within the boundaries of the public
254 infrastructure district.

255 (9) A board member is not in violation of Section 67-16-9 if the board member:

256 (a) discloses a business relationship in accordance with Sections 67-16-7 and 67-16-8
257 and files the disclosure with the creating entity:

258 (i) before any appointment or election; and

259 (ii) upon any significant change in the business relationship; and

260 (b) conducts the affairs of the public infrastructure district in accordance with this title
261 and any parameters described in the governing document.

262 Section 4. Section 17B-2a-1207 is amended to read:

263 **17B-2a-1207. Public infrastructure district bonds.**

264 (1) A public infrastructure district may issue negotiable bonds for the purposes
265 described in Section 17B-2a-1206, as provided in, as applicable:

266 (a) Title 11, Chapter 14, Local Government Bonding Act;

267 (b) Title 11, Chapter 27, Utah Refunding Bond Act;

268 (c) Title 11, Chapter 42, Assessment Area Act; and

269 (d) this section.

270 (2) A public infrastructure district bond:

271 (a) shall mature within 40 years of the date of issuance; and

272 (b) may not be secured by any improvement or facility paid for by the public
273 infrastructure district.

274 (3) (a) A public infrastructure district may issue a limited tax bond, in the same manner
275 as a general obligation bond:

276 (i) with the consent of 100% of surface property owners within the boundaries of the
277 public infrastructure district and 100% of the registered voters, if any, within the boundaries of
278 the proposed public infrastructure district; or

279 (ii) upon approval of a majority of the registered voters within the boundaries of the
280 public infrastructure district voting in an election held for that purpose under Title 11, Chapter
281 14, Local Government Bonding Act.

282 (b) A limited tax bond described in Subsection (3)(a):

283 (i) is not subject to the limitation on a general obligation bond described in Subsection
284 17B-1-1102(4)(a)(xii); and

285 (ii) is subject to a limitation, if any, on the principal amount of indebtedness as
286 described in the governing document.

287 (c) Unless limited tax bonds are initially purchased exclusively by one or more
288 qualified institutional buyers as defined in Rule 144A, 17 C.F.R. Sec. 230.144A, the public
289 infrastructure district may only issue limited tax bonds in denominations of not less than
290 \$500,000, and in integral multiples above \$500,000 of not less than \$1,000 each.

291 (d) (i) Without any further election or consent of property owners or registered voters,
292 a public infrastructure district may convert a limited tax bond described in Subsection (3)(a) to
293 a general obligation bond if the principal amount of the related limited tax bond together with
294 the principal amount of other related outstanding general obligation bonds of the public
295 infrastructure district does not exceed 15% of the fair market value of taxable property in the
296 public improvement district securing the general obligation bonds, determined by:

297 (A) an appraisal from an appraiser who is a member of the Appraisal Institute that is
298 addressed to the public infrastructure district or a financial institution; or

299 (B) the most recent market value of the property from the assessor of the county in
300 which the property is located.

301 (ii) The consent to the issuance of a limited tax bond described in Subsection (3)(a) is
302 sufficient to meet any statutory or constitutional election requirement necessary for the
303 issuance of the limited tax bond and any general obligation bond to be issued in place of the
304 limited tax bond upon meeting the requirements of this Subsection (3)(d).

305 (iii) A general obligation bond resulting from a conversion of a limited tax bond under
306 this Subsection (3)(d) is not subject to the limitation on general obligation bonds described in
307 Subsection [17B-1-1102\(4\)\(a\)\(xii\)](#).

308 (e) A public infrastructure district that levies a property tax for payment of debt service
309 on a limited tax bond issued under this section is not required to comply with the notice and
310 hearing requirements of Section [59-2-919](#) unless the rate exceeds the rate established in:

311 (i) Section [17B-2a-1209](#), except as provided in Subsection (8);

312 (ii) the governing document; or

313 (iii) the documents relating to the issuance of the limited tax bond.

314 (4) There is no limitation on the duration of revenues that a public infrastructure
315 district may receive to cover any shortfall in the payment of principal of and interest on a bond
316 that the public infrastructure district issues.

317 (5) A public infrastructure district is not a municipal corporation for purposes of the
318 debt limitation of Utah Constitution, Article XIV, Section 4.

319 (6) The board may, by resolution, delegate to one or more officers of the public
320 infrastructure district the authority to:

321 (a) in accordance and within the parameters set forth in a resolution adopted in
322 accordance with Section [11-14-302](#), approve the final interest rate, price, principal amount,
323 maturity, redemption features, and other terms of the bond;

324 (b) approve and execute any document relating to the issuance of a bond; and

325 (c) approve any contract related to the acquisition and construction of the
326 improvements, facilities, or property to be financed with a bond.

327 (7) (a) Any person may contest the legality of the issuance of a public infrastructure
328 district bond or any provisions for the security and payment of the bond for a period of 30 days
329 after:

330 (i) publication of the resolution authorizing the bond; or

331 (ii) publication of a notice of bond containing substantially the items required under
332 Subsection [11-14-316\(2\)](#).

333 (b) After the 30-day period described in Subsection (7)(a), no person may bring a
334 lawsuit or other proceeding contesting the regularity, formality, or legality of the bond for any
335 reason.

336 (8) (a) In the event of any statutory change in the methodology of assessment or
337 collection of property taxes in a manner that reduces the amounts which are devoted or pledged
338 to the repayment of limited tax bonds, a public infrastructure district may charge a rate
339 sufficient to receive the amount of property taxes or assessment the public infrastructure
340 district would have received before the statutory change in order to pay the debt service on
341 outstanding limited tax bonds.

342 (b) The rate increase described in Subsection (8)(a) may exceed the limit described in
343 Section [17B-2a-1209](#).

344 (c) The public infrastructure district may charge the rate increase described in
345 Subsection (8)(a) until the bonds, including any associated refunding bonds, or other securities,
346 together with applicable interest, are fully met and discharged.