

SB0179S03 compared with SB0179S02

~~text~~ shows text that was in SB0179S02 but was deleted in SB0179S03.

text shows text that was not in SB0179S02 but was inserted into SB0179S03.

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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

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- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

17B-2a-1202. Definitions.

As used in this part:

- (1) "Board" means the board of trustees of a public infrastructure district.
- (2) "Creating entity" means the county or municipality that approves of the creation of the public infrastructure district.
- (3) "District applicant" means the person proposing the creation of the public infrastructure district.
- (4) "Division" means a division of a public infrastructure district:
 - (a) that is relatively equal in number of eligible voters or potential eligible voters to all other divisions within the public infrastructure district, taking into account existing or potential developments which, when completed, would increase or decrease the population within the public infrastructure district; and
 - (b) which a member of the board represents.
- (5) "Governing document" means the document governing the public infrastructure district to which the creating entity agrees before the creation of the public infrastructure district, as amended from time to time, and subject to the limitations of Chapter 1, Provisions Applicable to All Local Districts, and this part.

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

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

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

(B) on taxable property within the district;

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

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

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

(i) a short-term bond;

(ii) a tax and revenue anticipation bond; or

(iii) a special assessment bond.

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

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

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

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

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

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

(i) Section 17B-1-203;

(ii) Section 17B-1-204;

(iii) ~~{Section 17B-1-212}~~ Subsection 17B-1-208(2); ~~{or}~~

(iv) Section ~~{17B-1-214.}~~ 17B-1-212; or

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(v) Section 17B-1-214.

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

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

(ii) 100% of the surface property owners within the applicable area approving the creation of the public infrastructure district.

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

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

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

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

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

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

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

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

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

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

~~[(c)-(f)]~~ (4) (a) Notwithstanding Chapter 1, Part 5, Withdrawal, property may be

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withdrawn from a public infrastructure district after:

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

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

~~[(B)]~~ (ii) if there are any registered voters within the area proposed to be withdrawn, a petition is filed with the creating entity that contains the signatures of 100% of registered voters within the area and approves of the withdrawal from the public infrastructure district; and

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

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

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

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

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

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

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

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

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

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

(B) the public infrastructure district to reimburse the district applicant for the initial

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costs the creating entity bears.

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

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

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

(d) (i) (A) The public infrastructure district solely bears the responsibility of any collection, enforcement, or foreclosure proceeding with regard to any tax, fee, or assessment the public infrastructure district imposes.

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

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

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

(a) historical performance of the district applicant;

(b) compliance with the creating entity's master plan;

(c) credit worthiness of the district applicant;

(d) plan of finance of the public infrastructure district; and

(e) proposed development within the public infrastructure district.

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

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

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

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

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

(2) (a) Unless otherwise limited in the governing document and except as provided in

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Subsection (2)(b), the initial term of each member of the board is four years.

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

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

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

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

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

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

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

or

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

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

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

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

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

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

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

(ii) for an at large board position established in the governing document, the registered

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voters of the public infrastructure district elect a member of the board in place of an appointed member at the next municipal general election for the board position.

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

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

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

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

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

(7) The governing document shall:

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

(b) state the number of board members;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) before any appointment or election; and

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

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

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

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

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

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

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

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

(d) this section.

(2) A public infrastructure district bond:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) the governing document; or

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

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

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

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

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

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

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

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

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

(ii) publication of a notice of bond containing substantially the items required under Subsection 11-14-316(2).

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

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

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

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