

SB0176S01 compared with SB0176

~~deleted text~~ shows text that was in SB0176 but was deleted in SB0176S01.

inserted text shows text that was not in SB0176 but was inserted into SB0176S01.

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Senator Ronald M. Winterton proposes the following substitute bill:

MINERAL LEASE FUNDS AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronald M. Winterton

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to the expenditure of federal mineral lease revenues.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the legislative intent and purpose of the Community Impact Fund Act;
- ▶ allows the Permanent Community Impact Fund Board to make a grant or loan regardless of whether the project results in more than one impact or outcome;
- ▶ makes the provisions of this bill retroactive; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

SB0176S01 compared with SB0176

None

Other Special Clauses:

This bill provides ~~{retrospective operation}~~ revisor instructions.

Utah Code Sections Affected:

AMENDS:

17B-1-612, as last amended by Laws of Utah 2019, Chapter 37

17D-1-201, as last amended by Laws of Utah 2020, Chapter 354

35A-8-301, as renumbered and amended by Laws of Utah 2012, Chapter 212

35A-8-302, as last amended by Laws of Utah 2019, Chapter 501

35A-8-305, as last amended by Laws of Utah 2019, Chapter 89

35A-8-307, as last amended by Laws of Utah 2014, Chapter 371

59-21-1, as last amended by Laws of Utah 2018, Chapter 28

ENACTS:

35A-8-310, Utah Code Annotated 1953

Utah Code Sections Affected by Revisor Instructions:

35A-8-310, Utah Code Annotated 1953

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

Section 1. Section **17B-1-612** is amended to read:

17B-1-612. Accumulated fund balances -- Limitations -- Excess balances --

Unanticipated excess of revenues -- Reserves for capital projects.

(1) (a) A local district may accumulate retained earnings or fund balances, as appropriate, in any fund.

(b) For the general fund only, a local district may only use an accumulated fund balance to:

(i) provide working capital to finance expenditures from the beginning of the budget year until general property taxes or other applicable revenues are collected, subject to Subsection (1)(c);

(ii) provide a resource to meet emergency expenditures under Section 17B-1-623; and

(iii) cover a pending year-end excess of expenditures over revenues from an unavoidable shortfall in revenues, subject to Subsection (1)(d).

SB0176S01 compared with SB0176

(c) Subsection (1)(b)(i) does not authorize a local district to appropriate a fund balance for budgeting purposes, except as provided in Subsection (4).

(d) Subsection (1)(b)(iii) does not authorize a local district to appropriate a fund balance to avoid an operating deficit during a budget year except:

- (i) as provided under Subsection (4); or
- (ii) for emergency purposes under Section 17B-1-623.

(2) (a) Except as provided in Subsection (2)(b), the accumulation of a fund balance in the general fund may not exceed the most recently adopted general fund budget, plus 100% of the current year's property tax.

(b) Notwithstanding Subsection (2)(a), a local district may accumulate in the general fund mineral lease revenue that the local district receives from the United States under the Mineral Lands Leasing Act, 30 U.S.C. Sec. 181 et seq., through a distribution under:

- (i) Title 35A, Chapter 8, Part 3, Community Impact [~~Alleviation~~] Fund Act; or
- (ii) Title 59, Chapter 21, Mineral Lease Funds.

(3) If the fund balance at the close of any fiscal year exceeds the amount permitted under Subsection (2), the district shall appropriate the excess in accordance with Section 17B-1-613.

(4) A local district may utilize any fund balance in excess of 5% of the total revenues of the general fund for budget purposes.

(5) (a) Within a capital projects fund, the board of trustees may, in any budget year, appropriate from estimated revenue or fund balance to a reserve for capital projects for the purpose of financing future specific capital projects, including new construction, capital repairs, replacement, and maintenance, under a formal long-range capital plan that the board of trustees adopts.

(b) A local district may allow a reserve amount under Subsection (5)(a) to accumulate from year to year until the accumulated total is sufficient to permit economical expenditure for the specified purposes.

(c) A local district may disburse from a reserve account under Subsection (5)(a) only by a budget appropriation that the local district adopts in accordance with this part.

(d) A local district shall ensure that the expenditures from the appropriation budget accounts described in this Subsection (5) conform to all requirements of this part relating to

SB0176S01 compared with SB0176

execution and control of budgets.

Section 2. Section **17D-1-201** is amended to read:

17D-1-201. Services that a special service district may be created to provide.

As provided in this part, a county or municipality may create a special service district to provide any combination of the following services:

- (1) water;
- (2) sewerage;
- (3) drainage;
- (4) flood control;
- (5) garbage collection and disposal;
- (6) health care;
- (7) transportation, including the receipt of federal secure rural school funds under Section 51-9-603 for the purposes of constructing, improving, repairing, or maintaining public roads;
- (8) recreation;
- (9) fire protection, including:
 - (a) emergency medical services, ambulance services, and search and rescue services, if fire protection service is also provided;
 - (b) Firewise Communities programs and the development of community wildfire protection plans; and
 - (c) the receipt of federal secure rural school funds as provided under Section 51-9-603 for the purposes of carrying out Firewise Communities programs, developing community wildfire protection plans, and performing emergency services, including firefighting on federal land and other services authorized under this Subsection (9);
- (10) providing, operating, and maintaining correctional and rehabilitative facilities and programs for municipal, state, and other detainees and prisoners;
- (11) street lighting;
- (12) consolidated 911 and emergency dispatch;
- (13) animal shelter and control;
- (14) receiving federal mineral lease funds under Title 59, Chapter 21, Mineral Lease Funds, and expending those funds to ~~[provide construction and maintenance of public~~

SB0176S01 compared with SB0176

~~facilities, traditional governmental services, and planning, as a means for mitigating impacts from extractive mineral industries]~~ be used in accordance with state and federal law;

(15) in a county of the first class, extended police protection;

(16) control or abatement of earth movement or a landslide;

(17) an energy efficiency upgrade, a renewable energy system, or electric vehicle charging infrastructure as defined in Section 11-42a-102, in accordance with Title 11, Chapter 42a, Commercial Property Assessed Clean Energy Act; or

(18) cemetery.

Section 3. Section **35A-8-301** is amended to read:

Part 3. Community Impact Fund Act

35A-8-301. Legislative intent -- Purpose and policy.

(1) It is the intent of the Legislature to make available funds received by the state from federal mineral lease revenues under Section 59-21-2, bonus payments on federal oil shale lease tracts U-A and U-B, and all other bonus payments on federal mineral leases to be used for ~~[the alleviation of social, economic, and public finance impacts resulting from the development of natural resources in this state]~~ planning, construction and maintenance of public facilities, and provision of public service, subject to the limitations provided for in Section 35 of the Mineral Leasing Act of 1920 (41 Stat. 450, 30 U.S.C. Sec. 191).

(2) To the extent allowed under the Mineral Leasing Act, any ambiguity as to whether a particular use of the lease revenue and bonus payments described in Subsection (1) is a permissible use under this part shall be resolved in favor of upholding the use.

~~[(2)]~~ (3) The purpose of this part is to maximize the long term benefit of funds derived from these lease revenues and bonus payments by fostering funding mechanisms which will, consistent with sound financial practices, result in the greatest use of financial resources for the greatest number of citizens of this state, with priority given to those communities designated as impacted by the development of natural resources covered by the Mineral Leasing Act.

~~[(3)]~~ (4) The policy of this state is to promote cooperation and coordination between the state and ~~[its]~~ the state's agencies and political subdivisions with individuals, firms, and business organizations engaged in the development of the natural resources of this state. ~~[The purpose of such efforts include private sector participation, financial and otherwise, in the alleviation of impacts associated with resources development activities.]~~

SB0176S01 compared with SB0176

Section 4. Section 35A-8-302 is amended to read:

35A-8-302. Definitions.

As used in this part:

(1) "Bonus payments" means that portion of the bonus payments received by the United States government under the Leasing Act paid to the state under Section 35 of the Leasing Act, 30 U.S.C. Sec. 191, together with any interest that had accrued on those payments.

(2) "Impact board" means the Permanent Community Impact Fund Board created under Section 35A-8-304.

(3) "Impact fund" means the Permanent Community Impact Fund established by this chapter.

(4) "Interlocal agency" means a legal or administrative entity created by a subdivision or combination of subdivisions under the authority of Title 11, Chapter 13, Interlocal Cooperation Act.

(5) "Leasing Act" means the Mineral Lands Leasing Act of 1920, 30 U.S.C. Sec. 181 et seq.

(6) "Qualifying sales and use tax distribution reduction" means that, for the calendar year beginning on January 1, 2008, the total sales and use tax distributions a city received under Section 59-12-205 were reduced by at least 15% from the total sales and use tax distributions the city received under Section 59-12-205 for the calendar year beginning on January 1, 2007.

(7) (a) "Planning" means any of the following performed by or on behalf of the state, a subdivision, or an interlocal entity:

(i) a study, analysis, plan, or survey; or

(ii) activities necessary to obtain a permit or land use approval, including review to determine the need, cost, or feasibility of obtaining a permit or land use approval.

(b) "Planning" includes:

(i) the preparation of maps and guidelines;

(ii) land use planning;

(iii) a study or analysis of:

(A) the social or economic impacts associated with natural resource development;

SB0176S01 compared with SB0176

(B) the demand for the transportation of individuals or goods;

(C) state, regional, and local development and growth;

(D) population and employment;

(E) development related to natural resources; and

(F) as related to any other activity described in this Subsection (7), engineering, financial analysis, legal analysis, or any other analysis helpful to the state, subdivision, or interlocal agency; and

(iv) any activity described in this Subsection (7) regardless of whether the activity is for a public facility or a public service.

(8) "Public facility" means a facility:

(a) in whole or in part, owned, controlled, or operated by the state, a subdivision, or an interlocal agency; and

(b) that serves a public purpose.

(9) (a) "Public service" means a service that:

(i) is provided, in whole or in part, by or on behalf of the state, a subdivision, or an interlocal agency; and

(ii) serves a public purpose.

(b) "Public service" includes:

(i) a service described in Subsection (9)(a) regardless of whether the service is provided in connection with a public facility;

(ii) the cost of providing a service described in Subsection (9)(a), including administrative costs, wages, and legal fees; and

(iii) a contract with a public postsecondary institution to fund research, education, or a public service program.

~~[(7)]~~ (10) "Subdivision" means a county, city, town, county service area, special service district, special improvement district, water conservancy district, water improvement district, sewer improvement district, housing authority, building authority, school district, or public postsecondary institution organized under the laws of this state.

~~[(8)]~~ (11) (a) "Throughput infrastructure project" means the following facilities, whether located within, partially within, or outside of the state:

(i) a bulk commodities ocean terminal;

SB0176S01 compared with SB0176

(ii) a pipeline for the transportation of liquid or gaseous hydrocarbons;
(iii) electric transmission lines and ancillary facilities;
(iv) a shortline freight railroad and ancillary facilities;
(v) a plant or facility for storing, distributing, or producing hydrogen, including the liquification of hydrogen, for use as a fuel in zero emission motor vehicles, for electricity generation, or for industrial use; or

(vi) a plant for the production of zero emission hydrogen fueled trucks.

(b) "Throughput infrastructure project" includes:

(i) an ownership interest or a joint or undivided ownership interest in a facility;

(ii) a membership interest in the owner of a facility; or

(iii) a contractual right, whether secured or unsecured, to use all or a portion of the throughput, transportation, or transmission capacity of a facility.

Section 5. Section **35A-8-305** is amended to read:

35A-8-305. Duties -- Loans -- Interest.

(1) The impact board shall:

(a) make grants and loans from the amounts appropriated by the Legislature out of the impact fund to state agencies, subdivisions, and interlocal agencies that are or may be socially or economically impacted, directly or indirectly, by mineral resource development for:

(i) planning;

(ii) construction and maintenance of public facilities; and

(iii) provision of public services;

(b) establish the criteria by which the loans and grants will be made;

(c) determine the order in which projects will be funded;

(d) in conjunction with other agencies of the state, subdivisions, or interlocal agencies, conduct studies, investigations, and research into the effects of proposed mineral resource development projects upon local communities;

(e) sue and be sued in accordance with applicable law;

(f) qualify for, accept, and administer grants, gifts, loans, or other funds from:

(i) the federal government; and

(ii) other sources, public or private; and

(g) perform other duties assigned to it under Sections 11-13-306 and 11-13-307.

SB0176S01 compared with SB0176

(2) Money, including all loan repayments and interest, in the impact fund derived from bonus payments may be used for any of the purposes set forth in Subsection (1)(a) but may only be given in the form of interest bearing loans to be paid back into the impact fund by the agency, subdivision, or interlocal agency.

~~[(3)(a) "Provision of public services" under Subsection (1)(a) includes contracts with public postsecondary institutions to fund research, education, or public service programs that benefit impacted counties or political subdivisions of the counties.]~~

~~[(b) Each contract under Subsection (3)(a) shall be:]~~

~~[(i) based on an application to the impact board from the impacted county; and]~~

~~[(ii) approved by the county legislative body.]~~

~~[(c) For purposes of this section, a land use plan is a public service program.]~~

(3) The impact board may make a grant or loan under Subsection (1) regardless of whether the activity results in more than one impact or outcome, including an increase in natural resource development or an increase in economic development.

(4) If the public service described in Subsection (1)(a) is a contract with a public postsecondary institution described in Subsection 35A-3-302(9)(b)(iii), the contract shall be:

(a) based on an application to the impact board from the impacted county; and

(b) approved by the county legislative body.

Section 6. Section **35A-8-307** is amended to read:

35A-8-307. Impact fund administered by impact board -- Eligibility for assistance -- Review by board -- Administration costs -- Annual report.

(1) (a) The impact board shall:

(i) administer the impact fund in a manner that will keep a portion of the impact fund revolving;

(ii) determine provisions for repayment of loans;

(iii) establish criteria for determining eligibility for assistance under this part; and

(iv) consider recommendations from the School and Institutional Trust Lands

Administration when awarding a grant described in Subsection 35A-8-303(6).

(b) (i) The criteria for awarding loans or grants made from funds described in Subsection 35A-8-303(5) shall be consistent with the requirements of Subsection 35A-8-303(5).

SB0176S01 compared with SB0176

(ii) The criteria for awarding grants made from funds described in Subsection 35A-8-303(2)(c) shall be consistent with the requirements of Subsection 35A-8-303(6).

(c) In order to receive assistance under this part, subdivisions and interlocal agencies shall submit formal applications containing the information that the impact board requires.

(2) In determining eligibility for loans and grants under this part, the impact board shall consider the following:

(a) the subdivision's or interlocal agency's current mineral lease production;

(b) the feasibility of the actual development or the increased development of a resource that may impact the subdivision or interlocal agency directly or indirectly;

(c) current taxes being paid by the subdivision's or interlocal agency's residents;

(d) the borrowing capacity of the subdivision or interlocal agency, including:

(i) [its] the ~~impact board's~~ subdivision's or interlocal agency's ability and willingness to sell bonds or other securities in the open market; and

(ii) [its] the ~~impact board's~~ subdivision's or interlocal agency's current and authorized indebtedness;

(e) all possible additional sources of state and local revenue, including utility user charges;

(f) the availability of federal assistance funds;

(g) probable growth of population due to actual or prospective natural resource development in an area;

(h) existing public facilities and services;

(i) the extent of the expected direct or indirect impact upon public facilities and public services of the actual or prospective natural resource development in an area; and

(j) the extent of industry participation in an impact alleviation plan, either as specified in Title 63M, Chapter 5, Resource Development Act, or otherwise.

(3) The impact board may not fund an education project that could otherwise have reasonably been funded by a school district through a program of annual budgeting, capital budgeting, bonded indebtedness, or special assessments.

(4) The impact board may restructure all or part of the agency's or subdivision's liability to repay loans for extenuating circumstances.

(5) The impact board shall:

SB0176S01 compared with SB0176

(a) review the proposed uses of the impact fund for loans or grants before approving them and may condition its approval on whatever assurances the impact board considers necessary to ensure that proceeds of the loan or grant will be used in accordance with the Leasing Act and this part; and

(b) ensure that each loan specifies the terms for repayment and is evidenced by general obligation, special assessment, or revenue bonds, notes, or other obligations of the appropriate subdivision or interlocal agency issued to the impact board under whatever authority for the issuance of those bonds, notes, or obligations exists at the time of the loan.

(6) The impact board shall allocate from the impact fund to the department those funds that are appropriated by the Legislature for the administration of the impact fund, but this amount may not exceed 2% of the annual receipts to the impact fund.

(7) The department shall include in the annual written report described in Section 35A-1-109, the number and type of loans and grants made as well as a list of subdivisions and interlocal agencies that received this assistance.

Section 7. Section ~~59-21-1 is amended to read:~~

~~35A-8-310 is enacted to read:~~

35A-8-310. Application -- Retroactivity.

(1) The provisions of this bill apply to any claim for which a court of competent jurisdiction has not issued a final unappealable judgment or order.

(2) The Legislature finds that the provisions of this bill:

(a) do not enlarge, eliminate, or destroy vested rights; and

(b) clarify legislative intent.

Section 8. Section 59-21-1 is amended to read:

59-21-1. Disposition of federal mineral lease money -- Priority to political subdivisions impacted by mineral development -- Disposition of mineral bonus payments -- Appropriation of money attributable to royalties from extraction of minerals on federal land located within boundaries of Grand Staircase-Escalante National Monument.

(1) Except as provided in Subsections (2) through (4), all money received from the United States under the provisions of the Mineral Lands Leasing Act, 30 U.S.C. Sec. 181 et seq., shall:

(a) be deposited in the Mineral Lease Account of the General Fund; and

SB0176S01 compared with SB0176

(b) be appropriated by the Legislature giving priority to those subdivisions of the state socially or economically impacted by development of minerals leased under the Mineral Lands Leasing Act, for:

- (i) planning;
- (ii) construction and maintenance of public facilities; and
- (iii) provision of public services.

(2) Seventy percent of money received from federal mineral lease bonus payments shall be deposited into the Permanent Community Impact Fund and shall be used as provided in Title 35A, Chapter 8, Part 3, Community Impact [~~Alleviation~~] Fund Act.

(3) Thirty percent of money received from federal mineral lease bonus payments shall be deposited in the Mineral Bonus Account created by Subsection 59-21-2(1) and appropriated as provided in that subsection.

(4) (a) For purposes of this Subsection (4):

(i) the "boundaries of the Grand Staircase-Escalante National Monument" means the boundaries:

(A) established by Presidential Proclamation No. 6920, 61 Fed. Reg. 50,223 (1996);
and

(B) modified by:

(I) Pub. L. No. 105-335, 112 Stat. 3139; and

(II) Pub. L. No. 105-355, 112 Stat. 3247; and

(ii) a special service district, school district, or federal land is considered to be located within the boundaries of the Grand Staircase-Escalante National Monument if a portion of the special service district, school district, or federal land is located within the boundaries described in Subsection (4)(a)(i).

(b) Beginning on July 1, 1999, the Legislature shall appropriate, as provided in Subsections (4)(c) through (g), money received from the United States that is attributable to royalties from the extraction of minerals on federal land that, on September 18, 1996, was located within the boundaries of the Grand Staircase-Escalante National Monument.

(c) The Legislature shall annually appropriate 40% of the money described in Subsection (4)(b) to the Division of Finance to be distributed by the Division of Finance to special service districts that are:

SB0176S01 compared with SB0176

(i) established by counties under Title 17D, Chapter 1, Special Service District Act;
(ii) socially or economically impacted by the development of minerals under the Mineral Lands Leasing Act; and

(iii) located within the boundaries of the Grand Staircase-Escalante National Monument.

(d) The Division of Finance shall distribute the money described in Subsection (4)(c) in amounts proportionate to the amount of federal mineral lease money generated by the county in which a special service district is located.

(e) The Legislature shall annually appropriate 40% of the money described in Subsection (4)(b) to the State Board of Education to be distributed equally to school districts that are:

(i) socially or economically impacted by the development of minerals under the Mineral Lands Leasing Act; and

(ii) located within the boundaries of the Grand Staircase-Escalante National Monument.

(f) The Legislature shall annually appropriate 2.25% of the money described in Subsection (4)(b) to the Utah Geological Survey to facilitate the development of energy and mineral resources in counties that are:

(i) socially or economically impacted by the development of minerals under the Mineral Lands Leasing Act; and

(ii) located within the boundaries of the Grand Staircase-Escalante National Monument.

(g) Seventeen and three-fourths percent of the money described in Subsection (4)(b) shall be deposited annually into the State School Fund established by Utah Constitution Article X, Section 5.

Section ~~{8}~~9. ~~{Retrospective operation.}~~

~~(1) The provisions of this bill apply to any claim for which a court of competent jurisdiction has not issued a final unappealable judgment or order.~~

~~(2)~~ Revisor instructions.

The Legislature ~~{finds}~~intends that the ~~{provisions of this bill.}~~

~~(a) do not enlarge, eliminate, or destroy vested rights; and~~

SB0176S01 compared with SB0176

~~(b) clarify legislative intent.~~

Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, replace the phrase "this bill" in Subsections 35A-8-310(1) and (2) with this bill's designated chapter number in the Laws of Utah.