

1 **MILITARY INSTALLATION DEVELOPMENT AUTHORITY**

2 **AMENDMENTS**

3 2023 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Jerry W. Stevenson**

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

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**LONG TITLE**

8 **Committee Note:**

9 The Retirement and Independent Entities Interim Committee recommended this bill.

10 Legislative Vote: 10 voting for 0 voting against 5 absent

11 **General Description:**

12 This bill amends provisions related to the Military Installation Development Authority.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines terms;
- 16 ▶ for purposes of creating a public infrastructure district, clarifies who is considered
- 17 the owner of military land within a project area by the Military Installation
- 18 Development Authority (authority);
- 19 ▶ amends provisions relating to ownership of a former rail line adjacent to a project
- 20 area located at an air force base;
- 21 ▶ enacts provisions immunizing a governmental entity from liability related to the
- 22 ownership of certain historically contaminated property; and
- 23 ▶ makes technical and conforming changes.

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**



28 This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **17D-4-201**, as renumbered and amended by Laws of Utah 2021, Chapter 314

32 **63H-1-208**, as enacted by Laws of Utah 2021, Chapter 414

33 ENACTS:

34 **63H-1-209**, Utah Code Annotated 1953



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

37 Section 1. Section **17D-4-201** is amended to read:

38 **17D-4-201. Creation -- Annexation or withdrawal of property.**

39 (1) (a) Except as provided in Subsection (1)(b), Subsection (2), and in addition to the  
40 provisions regarding creation of a local district in Title 17B, Chapter 1, Provisions Applicable  
41 to All Local Districts, a public infrastructure district may not be created unless:

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

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

48 (b) (i) As used in this Subsection (1)(b):

49 (A) "Military land" means the same as that term is defined in Section 63H-1-102.

50 (B) "Project area" means the same as that term is defined in Section 63H-1-102.

51 (ii) Notwithstanding Title 17B, Chapter 1, Part 2, Creation of a Local District, and any  
52 other provision of this chapter, the development authority may adopt a resolution creating a  
53 public infrastructure district as a subsidiary of the development authority if all owners of  
54 surface property proposed to be included within the public infrastructure district consent in  
55 writing to the creation of the public infrastructure district.

56 (iii) For purposes of Subsection (1)(b)(ii), if the surface property proposed to be  
57 included within the public infrastructure district includes military land that is within a project  
58 area, the owner of the military land within the project area is the lessee of the military land.

59 (2) (a) The following do not apply to the creation of a public infrastructure district:

60 (i) Section 17B-1-203;

61 (ii) Section 17B-1-204;

62 (iii) Subsection 17B-1-208(2);

63 (iv) Section 17B-1-212; or

64 (v) Section 17B-1-214.

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

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

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

71 (c) If the protest period is waived under Subsection (2)(b), a resolution approving the  
72 creation of the public infrastructure district may be adopted in accordance with Subsection  
73 17B-1-213(5).

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

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

76 (ii) shall be filed with the lieutenant governor in accordance with Subsection  
77 17B-1-215(1)(b)(iii).

78 (3) (a) Notwithstanding Title 17B, Chapter 1, Part 4, Annexation, an area outside of the  
79 boundaries of a public infrastructure district may be annexed into the public infrastructure  
80 district if the following requirements are met:

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

83 (B) adoption of a resolution of the board to annex the area, provided that the governing  
84 document or creation resolution for the public infrastructure district authorizes the board to  
85 annex an area outside of the boundaries of the public infrastructure district without future  
86 consent of the creating entity;

87 (ii) if there are any registered voters within the area proposed to be annexed, a petition  
88 is filed with the creating entity that contains the signatures of 100% of registered voters within  
89 the area, demonstrating that the registered voters approve of the annexation into the public

90 infrastructure district; and

91 (iii) a petition is filed with the creating entity that contains the signatures of 100% of  
92 surface property owners within the area proposed to be annexed, demonstrating the surface  
93 property owners' consent to the annexation into the public infrastructure district.

94 (b) Within 30 days of meeting the requirements of Subsection (3)(a), the board shall  
95 file with the lieutenant governor:

96 (i) a copy of a notice of impending boundary action, as defined in Section 67-1a-6.5,  
97 that meets the requirements of Subsection 67-1a-6.5(3); and

98 (ii) a copy of an approved final local entity plat, as defined in Section 67-1a-6.5.

99 (4) (a) Notwithstanding Title 17B, Chapter 1, Part 5, Withdrawal, property may be  
100 withdrawn from a public infrastructure district if the following requirements are met:

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

103 (B) adoption of a resolution of the board to withdraw the property, provided that the  
104 governing document or creation resolution for the public infrastructure district authorizes the  
105 board to withdraw property from the public infrastructure district without further consent from  
106 the creating entity;

107 (ii) if there are any registered voters within the area proposed to be withdrawn, a  
108 petition is filed with the creating entity that contains the signatures of 100% of registered voters  
109 within the area, demonstrating that the registered voters approve of the withdrawal from the  
110 public infrastructure district; and

111 (iii) a petition is filed with the creating entity that contains the signatures of 100% of  
112 surface property owners within the area proposed to be withdrawn, demonstrating that the  
113 surface property owners consent to the withdrawal from the public infrastructure district.

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

118 (c) Upon meeting the requirements of Subsections (4)(a) and (b), the board shall  
119 comply with the requirements of Section 17B-1-512.

120 (5) A creating entity may impose limitations on the powers of a public infrastructure

121 district through the governing document.

122 (6) (a) A public infrastructure district is separate and distinct from the creating entity.

123 (b) (i) Except as provided in Subsection (6)(b)(ii), any financial burden of a public  
124 infrastructure district:

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

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

128 (ii) Notwithstanding Subsection (6)(b)(i) and Section 17B-1-216, the governing  
129 document may require:

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

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

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

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

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

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

141 (B) The creating entity does not bear the responsibility described in Subsection  
142 (6)(d)(i)(A).

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

146 (7) A creating entity may establish criteria in determining whether to approve or  
147 disapprove of the creation of a public infrastructure district, including:

148 (a) historical performance of the district applicant;

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

150 (c) credit worthiness of the district applicant;

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

- 152 (e) proposed development within the public infrastructure district.
- 153 (8) (a) The creation of a public infrastructure district is subject to the sole discretion of
- 154 the creating entity responsible for approving or rejecting the creation of the public
- 155 infrastructure district.
- 156 (b) The proposed creating entity bears no liability for rejecting the proposed creation of
- 157 a public infrastructure district.

158 Section 2. Section **63H-1-208** is amended to read:

159 **63H-1-208. Former rail line.**

160 (1) A former rail line automatically becomes included within a project area located at

161 an air force base if:

- 162 (a) the authority acquires title to the former rail line as provided in Subsection (2); and
- 163 (b) a portion of the former rail line is adjacent to the project area.

164 (2) Notwithstanding Section 72-5-117, the Department of Transportation may transfer

165 to the authority, at no cost to the authority, title to that portion of a former rail line adjacent to a

166 project area located at an air force base that the Department of Transportation does not need for

167 construction of a freeway interchange.

168 [~~2~~] (3) The authority may:

- 169 (a) develop the former rail line; or
- 170 (b) transfer title of all or part of the former rail line, at no cost, to another governmental
- 171 entity or nonprofit entity who agrees to receive the title.

172 (4) A governmental entity or nonprofit entity that agrees to receive title to all or part of

173 a former rail line under Subsection (3)(b) assumes responsibility for the maintenance of and

174 any construction that remains to be completed on the former rail line.

175 Section 3. Section **63H-1-209** is enacted to read:

176 **63H-1-209. Immunity from contaminated property claims.**

177 (1) As used in this section:

- 178 (a) "Agency" means the same as that term is defined in Section 57-25-102.
- 179 (b) "Claim" means an action, suit, claim, demand, allegation, or cause of action,
- 180 whether grounded in law or equity, made in a court of competent jurisdiction, mediation,
- 181 arbitration, before a regulatory body, or in another dispute resolution forum.

182 (c) "Contaminated property" means real property in a project area that is:

- 183 (i) affected by historical contamination; and  
184 (ii) owned by a governmental entity.
- 185 (d) "Environmental covenant" means the same as that term is defined in Section  
186 57-25-102.
- 187 (e) "Governmental entity" means the same as that term is defined in Section  
188 63G-7-102.
- 189 (f) "Hazardous materials" means the same as that term is defined in Section 19-6-302.  
190 (g) "Hazardous substances" means the same as that term is defined in Section  
191 19-6-302.
- 192 (h) "Historical contamination" means the placement, disposal, or release of hazardous  
193 materials or hazardous substances onto, into, under, or in a way that affects real property, and  
194 which placement, disposal, or release of hazardous materials or hazardous substances occurred  
195 prior to ownership of the real property by a governmental entity.
- 196 (i) "Ownership," "own," "owned," "owns," or "acquires" means to have an ownership  
197 or other established interest in real property, including holding title to, leasing, operating on, or  
198 maintaining real property.
- 199 (2) In addition to the liability protection provided by Subsections 63G-7-201(4)(l) and  
200 63G-7-201(4)(s)(iii) and the other provisions of Title 63G, Chapter 7, Governmental Immunity  
201 Act of Utah, the protections of Subsection (3) apply to a governmental entity that owns or  
202 approves the use of contaminated property.
- 203 (3) (a) Ownership of contaminated property by a governmental entity, or a  
204 governmental entity's approval of the use of contaminated property does not subject a  
205 governmental entity, its agents, or its officers or employees to any liability for or related to a  
206 claim arising from, proximately caused by, or related to historical contamination.
- 207 (b) No governmental entity waives immunity from suit or liability by this section.
- 208 (c) A claim made against a governmental entity, its agents, or its officers or employees  
209 in violation of this section shall subject the claimant to the payment of double the attorney fees  
210 and costs incurred by the governmental entity related to the claim.
- 211 (d) This Subsection (3) does not limit or alter:
- 212 (i) claims against or the liability of the party that placed, disposed of, or released the  
213 hazardous materials or hazardous substances onto, into, under, or in a way that affects

214 contaminated property; or

215 (ii) a workers' compensation claim made by an employee of an entity that works on  
216 contaminated property or conducts work related to contaminated property.

217 (4) If a governmental entity that owns contaminated property develops the  
218 contaminated property for public or governmental purposes, including recreation, government  
219 offices, parking, or related uses, then Subsection (3) extends to that governmental entity,  
220 regardless of whether the governmental entity had a role in approving use of the contaminated  
221 property, if the governmental entity:

222 (a) obtains a certificate of completion from the Utah Department of Environmental  
223 Quality following participation in the voluntary cleanup program, as set forth in Section  
224 [19-8-111](#); or

225 (b) complies with the terms of an environmental covenant signed by an agency and  
226 properly recorded in the county records against the property.

227 **Section 4. Effective date.**

228 This bill takes effect upon approval by the governor, or the day following the  
229 constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's  
230 signature, or in the case of a veto, the date of veto override.