

Senator Jerry W. Stevenson proposes the following substitute bill:

MILITARY INSTALLATION DEVELOPMENT AUTHORITY

AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jerry W. Stevenson

House Sponsor: Val L. Peterson

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **17D-4-201**, as renumbered and amended by Laws of Utah 2021, Chapter 314

29 **63H-1-208**, as enacted by Laws of Utah 2021, Chapter 414

30 ENACTS:

31 **63H-1-209**, Utah Code Annotated 1953



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

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

35 **17D-4-201. Creation -- Annexation or withdrawal of property.**

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

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

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

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

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

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

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

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

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

- 57 (i) Section 17B-1-203;
- 58 (ii) Section 17B-1-204;
- 59 (iii) Subsection 17B-1-208(2);
- 60 (iv) Section 17B-1-212; or
- 61 (v) Section 17B-1-214.

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

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

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

68 (c) If the protest period is waived under Subsection (2)(b), a resolution approving the
69 creation of the public infrastructure district may be adopted in accordance with Subsection
70 17B-1-213(5).

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

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

73 (ii) shall be filed with the lieutenant governor in accordance with Subsection
74 17B-1-215(1)(b)(iii).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

117 (5) A creating entity may impose limitations on the powers of a public infrastructure
118 district through the governing document.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

145 (a) historical performance of the district applicant;

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

147 (c) credit worthiness of the district applicant;

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

149 (e) proposed development within the public infrastructure district.

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

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

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

156 **63H-1-208. Former rail line.**

157 (1) A former rail line automatically becomes included within a project area located at
158 an air force base if:

159 (a) the authority acquires title to the former rail line as provided in Subsection (2); and

160 (b) a portion of the former rail line is adjacent to the project area.

161 (2) Notwithstanding Section 72-5-117, the Department of Transportation may transfer
162 to the authority, at no cost to the authority, title to that portion of a former rail line adjacent to a
163 project area located at an air force base that the Department of Transportation does not need for
164 construction of a freeway interchange.

165 [~~2~~] (3) The authority may:

166 (a) develop the former rail line; or

167 (b) transfer title of all or part of the former rail line, at no cost, to another governmental
168 entity or nonprofit entity who agrees to receive the title.

169 (4) A governmental entity or nonprofit entity that agrees to receive title to all or part of
170 a former rail line under Subsection (3)(b) assumes responsibility for the maintenance of and
171 any construction that remains to be completed on the former rail line.

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

173 **63H-1-209. Immunity from contaminated property claims.**

174 (1) As used in this section:

175 (a) "Agency" means the same as that term is defined in Section 57-25-102.

176 (b) "Claim" means an action, suit, claim, demand, allegation, or cause of action,
177 whether grounded in law or equity, made in a court of competent jurisdiction, mediation,
178 arbitration, before a regulatory body, or in another dispute resolution forum.

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

180 (i) affected by historical contamination; and

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

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

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

219 (a) obtains a certificate of completion from the Utah Department of Environmental
220 Quality following participation in the voluntary cleanup program, as set forth in Section
221 [19-8-111](#); or

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

224 **Section 4. Effective date.**

225 If approved by two-thirds of all the members elected to each house, this bill takes effect
226 upon approval by the governor, or the day following the constitutional time limit of Utah
227 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
228 the date of veto override.