

**Representative Brian R. Allen** proposes to substitute the following bill:

**AMENDMENTS TO COUNTY IMPROVEMENT**

**DISTRICTS FOR WATER SERVICES**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Brian R. Allen**

AN ACT RELATING TO SPECIAL DISTRICTS; RESTRICTING THE AREA THAT CAN BE INCLUDED IN A COUNTY IMPROVEMENT DISTRICT FOR WATER SERVICES UNDER CERTAIN CIRCUMSTANCES; ESTABLISHING A PROCEDURE FOR WITHDRAWING TERRITORY WITHIN A MUNICIPALITY FROM A COUNTY IMPROVEMENT DISTRICT FOR WATER SERVICES; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**17A-2-301**, as last amended by Chapters 173, 316 and 342, Laws of Utah 1995

**17A-2-334**, as renumbered and amended by Chapter 186, Laws of Utah 1990

ENACTS:

**17A-2-340**, Utah Code Annotated 1953

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

Section 1. Section **17A-2-301** is amended to read:

**17A-2-301. Establishment -- Authority -- Area.**

(1) [Improvement districts] An improvement district may:

(a) be established in any county in this state as provided in this part for the purposes [hereinafter] stated in this section; and [may]

(b) acquire, through construction, purchase, gift, or condemnation, or any combination of these methods, and [may] operate all or any part of [~~the following~~]:

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- 1        [~~(a)~~] (i) systems for the supply, treatment, and distribution of water;
- 2        [~~(b)~~] (ii) systems for the collection, treatment, and disposition of sewage;
- 3        [~~(c)~~] (iii) systems for the collection, retention, and disposition of storm and flood waters;
- 4        [~~(d)~~] (iv) systems for the generation, distribution, and sale of electricity; and
- 5        [~~(e)~~] (v) systems for the transmission of natural or manufactured gas that are:

6        [(i)] (A) connected to a gas plant, as defined in Section 54-2-1, of a gas corporation, as  
7 defined in Section 54-2-1, regulated under Section 54-4-1; and

8        [(ii)] (B) to be used to facilitate gas utility service within the district if such gas utility  
9 service is not available within the district prior to the acquisition or construction of such systems.

10 Such new gas utility service shall be provided by a gas corporation regulated under Section 54-4-1  
11 and not by the district.

12        (2) (a) [~~The~~] Subject to Subsection (2)(d), the area of [any] a district created under this part  
13 may include all or part of any county or counties, including all or any part of any incorporated  
14 municipalities, other incorporated areas, and unincorporated areas, as the needs of the inhabitants  
15 of the proposed districts may appear.

16        (b) The boundaries of a district created under this part do not need to be contiguous.

17        (c) [~~Where a~~] If an improvement district created under this part is operating any facility  
18 or system mentioned in this part, no other district overlapping that district, in whole or in part, may  
19 be created in a manner as to have authority to own or operate a facility or system of like kind.

20        (d) (i) Notwithstanding Subsection (2)(a), an improvement district created under this part  
21 after the effective date of this section for the supply, treatment, or distribution of water may not  
22 include part of a municipality unless:

23        (A) the municipality's governing body adopts an ordinance or resolution consenting to the  
24 inclusion; and

25        (B) the owners of over 50% of all parcels of real property, located in the area proposed to  
26 be included and that will have at least one water connection to the improvement district, request  
27 in writing that the improvement district and not the municipality provide the services proposed to  
28 be provided by the improvement district.

29        (ii) For purposes of Subsection (2)(d)(i)(B), the provisions of Subsections  
30 17A-2-340(2)(c)(i), (ii), (iii), and (iv) apply.

31        (3) [~~Where any~~] If an improvement district is created under this part solely for the purpose

1 of acquiring a system for the collection, retention, or disposition of storm and flood waters, the  
2 county legislative body creating the district may, in its discretion and despite anything to the  
3 contrary in Section 17A-2-305, act as the board of trustees of the district for so long as it considers  
4 desirable.

5 Section 2. Section 17A-2-334 is amended to read:

6 **17A-2-334. Withdrawal from improvement district -- Petition by majority of**  
7 **property owners -- Procedure.**

8 ~~[Whenever a]~~ (1) Except as provided in Section 17A-2-340, withdrawal of territory from  
9 an improvement district shall be governed by Sections 17A-2-334, 17A-2-335, 17A-2-336,  
10 17A-2-337, and 17A-2-338.

11 (2) A majority of the real property owners in a territory within the boundaries of [any] an  
12 improvement district operating or created under authority of this part [shall file] may request to  
13 withdraw the territory from the improvement district by filing a petition with the clerk of the  
14 district court of the county in which the territory lies~~[, a petition]:~~

15 (a) requesting that the territory be withdrawn from the improvement district [and the  
16 petition sets];

17 (b) setting forth the reasons why the territory should be withdrawn from the improvement  
18 district [and is];

19 (c) accompanied [with] by a map or plat of the territory sought to be withdrawn; and

20 (d) designating no more than five persons [who are] empowered to act for the petitioners  
21 in the proceedings[.];

22 (3) Upon receipt of a petition under Subsection (2), the court shall cause a notice of the  
23 filing;

24 (a) to be served upon the board of trustees of the improvement district in the same manner  
25 as a summons in a civil action; and [shall also cause notice]

26 (b) to be published for a period of ten days in a newspaper of general circulation in the  
27 improvement district.

28 (4) The issues raised by the petition shall be joined and the cause tried as provided for by  
29 the Utah Rules of Civil Procedure in the trial of civil causes.

30 (5) The proper authorities of the improvement district or any person interested in the  
31 subject matter of the petition may appear and contest the granting of the petition.

1 Section 3. Section 17A-2-340 is enacted to read:

2 **17A-2-340. Withdrawal of territory in a municipality from improvement districts for**  
3 **the supply, treatment, or distribution of water.**

4 (1) (a) Notwithstanding Section 17A-2-334 and subject to Subsections (1)(b) and (c), an  
5 area located within the boundaries of a municipality may be withdrawn from an improvement  
6 district for the supply, treatment, or distribution of water as provided in this section.

7 (b) This section applies only if, at the time of the creation of the improvement district, the  
8 municipality had been operating within the municipality a system for the supply, treatment, or  
9 distribution of water.

10 (c) Each withdrawal under this section shall include all of the area within the improvement  
11 district for the supply, treatment, or distribution of water that is also within the municipality.

12 (d) For purposes of this section, "petition" means a petition under Subsection (2)(a).

13 (2) (a) The process to withdraw an area located within the boundaries of a municipality  
14 from an improvement district for the supply, treatment, or distribution of water is initiated by a  
15 petition filed with the clerk or recorder of the municipality in which the area is located.

16 (b) Each petition under Subsection (2)(a) shall:

17 (i) identify the improvement district from which withdrawal is proposed;

18 (ii) describe the area proposed to be withdrawn from the improvement district;

19 (iii) request the municipal legislative body to adopt a resolution seeking withdrawal of the  
20 area from the improvement district;

21 (iv) be signed by the owners of at least 25% of all parcels of real property, located within  
22 the area proposed to be withdrawn, that have at least one water connection to the improvement  
23 district; and

24 (v) designate up to five of the petition signers as sponsors, one of whom shall be  
25 designated as the contact sponsor, and indicate the mailing address of each sponsor.

26 (c) For purposes of Subsection (2)(b)(iv):

27 (i) the owner of real property shall be the record title owner according to the records of the  
28 county recorder on the date of the filing of the petition;

29 (ii) a parcel of real property may not be included in the calculation of the required  
30 percentage unless the petition is signed by:

31 (A) except as provided in Subsection (2)(c)(ii)(B), owners representing a majority

1 ownership interest in that parcel; or

2 (B) if the parcel is owned by joint tenants or tenants by the entirety, 50% of the number  
3 of owners of that parcel;

4 (iii) the signature of a person signing a petition in a representative capacity on behalf of  
5 an owner is invalid unless the person's representative capacity and the name of the owner the  
6 person represents are indicated on the petition with the person's signature; and

7 (iv) subject to Subsection (2)(c)(iii), a duly appointed personal representative may sign a  
8 petition on behalf of a deceased owner.

9 (d) On or before the date of filing, the petition sponsors shall mail or deliver a copy of the  
10 petition to the governing body of the improvement district from which the area is proposed to be  
11 withdrawn.

12 (3) (a) Within 45 days of the filing of a petition the municipal clerk or recorder shall:

13 (i) with the assistance of improvement district, county, and other municipal officers from  
14 whom the clerk or recorder requests assistance, determine whether the petition complies with  
15 Subsections (2)(b) and (c); and

16 (ii) (A) if the clerk or recorder determines that the petition complies with those  
17 requirements:

18 (I) certify the petition;

19 (II) deliver the certified petition to the municipal legislative body; and

20 (III) deliver written notification of the certification to the governing body of the  
21 improvement district and the contact sponsor; or

22 (B) if the clerk or recorder determines that the petition fails to comply with any of those  
23 requirements, reject the petition and deliver written notification of the rejection and the reasons  
24 for the rejection to the governing body of the improvement district and the contact sponsor.

25 (b) Each signature on a petition certified under Subsection (3)(a)(ii)(A) shall be  
26 conclusively presumed to be valid unless, within 40 days after certification, proof is filed with the  
27 municipal clerk or recorder establishing that the signature is not authentic.

28 (c) (i) Subject to Subsection (3)(c)(ii), a signer of a petition may withdraw the signer's  
29 signature from the petition or, after it is withdrawn, reinstate it.

30 (ii) A withdrawal or reinstatement of a signature under Subsection (3)(c)(i) is not valid  
31 unless it is:

1           (A) in writing;  
2           (B) signed by the person who signed the petition; and  
3           (C) delivered, within 40 days after certification of the petition under Subsection  
4 (3)(a)(ii)(A), to the clerk or recorder of the municipality in which the area proposed to be  
5 withdrawn is located.

6           (4) (a) Within the time provided under Subsection (4)(b), the municipal legislative body  
7 may adopt a resolution indicating its approval or rejection of the withdrawal.

8           (b) (i) Subject to Subsection (4)(b)(ii), each resolution under Subsection (4)(a) shall be  
9 adopted no less than 45 and no more than 120 days after a petition is certified under Subsection  
10 (3)(a)(ii)(A).

11           (ii) Notwithstanding Subsection (4)(b)(i), the time for adopting a resolution under  
12 Subsection (4)(a) may be extended one additional 120-day period by resolution of the municipal  
13 legislative body adopted before the expiration of the 120-day period under Subsection (4)(b)(i).

14           (c) Before adopting a resolution under Subsection (4)(a), each municipal legislative body  
15 shall:

16           (i) hold a public hearing on the proposed withdrawal; and

17           (ii) give reasonable notice, as provided in Subsection 10-9-103(2)(a), of the hearing at least  
18 14 days before the hearing.

19           (d) A failure of the municipal legislative body to adopt a resolution under Subsection  
20 (4)(a) within the time allowed under Subsection (4)(b) shall be considered a rejection of the  
21 petition.

22           (5) (a) A withdrawal under this section may not occur unless the withdrawal has been  
23 approved by a majority vote of registered voters residing within the area proposed to be withdrawn  
24 and voting at a special or municipal election held for that purpose after the adoption of a resolution  
25 under Subsection (4)(a) but within six months of the adoption.

26           (b) (i) Each election under Subsection (5)(a) shall be held by the county in which the area  
27 proposed to be withdrawn is located.

28           (ii) For purposes of an election under Subsection (5)(b)(i), a county legislative body may  
29 treat the area proposed to be withdrawn as a single precinct or divide it into precincts and may  
30 establish special polling places within the area.

31           (c) If the voters reject the withdrawal at an election under Subsection (5)(a), no petition

1 may be filed proposing withdrawal of the same area until five years after the election.

2 (6) (a) (i) If the voters approve the withdrawal at an election under Subsection (5), the  
3 governing body of the improvement district and the legislative body of the municipality in which  
4 the area proposed to be withdrawn is located shall, except as provided in Subsection (6)(d):

5 (A) within 90 days of the election, engage the engineering and accounting consultants  
6 chosen by the procedure provided in Subsection (6)(c); and

7 (B) require the engineering and accounting consultants engaged under Subsection (6)(a)(i)  
8 to communicate in writing to the governing body of the improvement district and the municipal  
9 legislative body, within 90 days from the date of their engagement, the information required by  
10 Subsection (7).

11 (b) For purposes of this Subsection (6):

12 (i) "Accounting consultant" means a certified public accountant or a firm of certified  
13 public accountants with the expertise necessary to make the determinations required under  
14 Subsection (7)(b); and

15 (ii) "Engineering consultant" means a person or firm that has the expertise in the  
16 engineering aspects of a system for the supply, treatment, and distribution of water that is  
17 necessary to make the determination required under Subsection (7)(a).

18 (c) (i) (A) Unless the municipal legislative body and the governing body of the  
19 improvement district agree on an engineering consultant, an engineering consultant shall be chosen  
20 from a list of six engineering consultants provided by the Consulting Engineers Council of Utah  
21 as provided in this Subsection (6)(c).

22 (B) Unless the municipal legislative body and the governing body of the improvement  
23 district agree on an accounting consultant, an accounting consultant shall be chosen from a list of  
24 six accounting consultants provided by the Utah Association of Certified Public Accountants as  
25 provided in this Subsection (6)(c).

26 (C) A list under Subsection (6)(c)(i)(A) or (B) may not include a consultant that has had  
27 a contract for services with the municipality or improvement district during the two year period  
28 immediately before the list is provided to the municipality and improvement district.

29 (ii) The municipal legislative body and the governing body of the improvement district  
30 shall obtain the lists described in Subsection (6)(c)(i) within 20 days of the election under  
31 Subsection (5).

1           (iii) Within 20 days of receiving the lists described in Subsection (6)(c)(i), the governing  
2 body of the improvement district shall eliminate the name of one engineering consultant from the  
3 list of engineering consultants and the name of one accounting consultant from the list of  
4 accounting consultants and shall notify the municipal legislative body in writing of the  
5 eliminations.

6           (iv) Within three days of receiving notification under Subsection (6)(c)(iii), the municipal  
7 legislative body shall eliminate another name of an engineering consultant from the list of  
8 engineering consultants and another name of an accounting consultant from the list of accounting  
9 consultants and shall notify the governing body of the improvement district in writing of the  
10 eliminations.

11           (v) The governing body of the improvement district and the municipal legislative body  
12 shall continue to alternate between them, each eliminating the name of one engineering consultant  
13 from the list of engineering consultants and the name of one accounting consultant from the list  
14 of accounting consultants and providing written notification of the eliminations within three days  
15 of receiving notification of the previous notifications, until the name of only one engineering  
16 consultant remains on the list of engineering consultants and the name of only one accounting  
17 consultant remains on the list of accounting consultants.

18           (d) (i) The requirement under Subsection (6)(a) to engage engineering and accounting  
19 consultants does not apply if the municipal legislative body and the governing body of the  
20 improvement district agree on the allocations that are the engineering consultant's responsibility  
21 under Subsection (7)(a) and the determinations that are the accountant consultant's responsibility  
22 under Subsection (7)(b).

23           (7) (a) (i) The engineering consultant shall allocate the improvement district assets  
24 between the improvement district and the municipality as provided in this Subsection (7)(a).

25           (ii) The engineering consultant shall allocate:

26           (A) to the improvement district those assets reasonably needed by the improvement district  
27 to provide to the area of the district remaining after withdrawal the kind and quality of service  
28 provided before withdrawal; and

29           (B) to the municipality those assets reasonably needed by the municipality to provide to  
30 the withdrawn area the kind and quality of service provided before withdrawal.

31           (iii) If the engineering consultant determines that both the improvement district and the

1 municipality reasonably need an improvement district asset to provide to their respective areas the  
2 kind and quality of service provided before withdrawal, the engineering consultant shall:

3 (A) allocate the asset between the improvement district and municipality according to their  
4 relative needs, if the asset is reasonably susceptible of division; or

5 (B) allocate the asset to the improvement district, if the asset is not reasonably susceptible  
6 of division.

7 (iv) All improvement district assets remaining after application of Subsections (7)(a)(ii)  
8 and (iii) shall be allocated to the improvement district.

9 (b) (i) The accounting consultant shall determine the withdrawn area's proportionate share  
10 of any redemption premium and the principal of and interest on:

11 (A) the improvement district's revenue bonds that were outstanding at the time the petition  
12 was filed; and

13 (B) the improvement district's general obligation bonds that:

14 (I) were outstanding at the time the petition was filed; and

15 (II) are treated as revenue bonds under Subsection (10)(b).

16 (ii) For purposes of Subsection (7)(b)(i), the withdrawn area's proportionate share shall be  
17 the amount that bears the same relationship to the total for the entire improvement district that the  
18 average annual gross revenues from the withdrawn area during the three most recent complete  
19 fiscal years before the filing of the petition bear to the average annual gross revenues from the  
20 entire improvement district for the same period.

21 (c) (i) The engineering and accounting consultants shall cooperate and collaborate together  
22 and share information and expertise to assist each other to fulfill the duties and responsibilities  
23 provided in Subsections (7)(a) and (b).

24 (ii) The officers and employees of each improvement district and municipality involved  
25 in a proposed withdrawal under this section shall cooperate fully with the engineering and  
26 accounting consultants and shall provide them the information they request in connection with  
27 fulfilling their duties and responsibilities under Subsections (7)(a) and (b).

28 (8) (a) (i) Within 45 days after receiving the written communication from the engineering  
29 and accounting consultants providing the information required by Subsection (7), the municipal  
30 legislative body shall adopt a resolution either approving or rejecting the withdrawal.

31 (ii) Each resolution under Subsection (8)(a)(i) approving a withdrawal shall include a map

1 or plat that accurately delineates by metes and bounds the withdrawn area.

2 (iii) The municipal legislative body's failure to adopt a resolution under Subsection  
3 (8)(a)(i) shall be considered a rejection of the withdrawal.

4 (b) Within three days of adopting a resolution under Subsection (8)(a)(i), the municipal  
5 legislative body shall send a certified copy of the resolution to the governing body of the  
6 improvement district.

7 (9) (a) Except as provided in Subsection (9)(b), the improvement district and the  
8 municipality shall equally share the cost of the engineering and accounting consultants and the  
9 expenses of an election under Subsection (5).

10 (b) Notwithstanding Subsection (9)(a), the municipality shall pay the full cost of the  
11 engineering and accounting consultants and the full expenses of an election under Subsection (5)  
12 if the municipal legislative body rejects the withdrawal under Subsection (8)(a).

13 (10) (a) (i) Before recording the resolution under Subsection (11)(a)(i), the municipality  
14 shall irrevocably deposit government obligations, as defined in Subsection 11-27-2(6), into an  
15 escrow trust fund the principal of and interest on which are sufficient to provide for the timely  
16 payment of the amount determined by the accounting consultant under Subsection (7)(b)(i).

17 (ii) Concurrently with the creation of the escrow, the municipality shall provide to the  
18 improvement district:

19 (A) a written opinion of an attorney experienced in the tax-exempt status of municipal  
20 bonds stating that the establishment and use of the escrow to pay the proportionate share of the  
21 improvement district's outstanding revenue bonds and general obligation bonds that are treated as  
22 revenue bonds will not adversely affect the tax-exempt status of the bonds; and

23 (B) a written opinion of an independent certified public accountant verifying that the  
24 principal of and interest on the government obligations are sufficient to provide for the payment  
25 of the withdrawn area's proportionate share of the bonds as provided in Subsection (7)(b)(i).

26 (iii) The municipality shall bear all expenses of the escrow and the redemption of the  
27 bonds.

28 (iv) The municipality may issue bonds under Title 11, Chapter 14, Utah Municipal Bond  
29 Act, to fund the escrow.

30 (b) For purposes of Subsection (7)(b)(i), an improvement district general obligation bond  
31 shall be treated as a revenue bond if:

1           (i) the bond is outstanding on the date the petition was filed; and

2           (ii) the principal of and interest on the bond, as of the date the petition was filed, had been  
3 paid entirely from improvement district revenues and not from a levy of ad valorem tax.

4           (c) The property within the withdrawn area shall continue after withdrawal to be taxable  
5 by the improvement district:

6           (i) for the purpose of paying the withdrawn area's just proportion of the improvement  
7 district's general obligation bonds, other than those bonds treated as revenue bonds under  
8 Subsection (10)(b), outstanding at the time the petition was filed until the bonded indebtedness has  
9 been satisfied; and

10           (ii) to the extent and for the years necessary to generate sufficient revenue that, when  
11 combined with the escrow under Subsection (10)(a) and the revenues from the improvement  
12 district remaining after withdrawal that are pledged to pay the revenue bonds, are sufficient to  
13 provide for the payment of principal and interest on the improvement district's general obligation  
14 bonds that are treated as revenue bonds under Subsection (10)(b) and that were outstanding at the  
15 time the petition was filed.

16           (d) (i) Except as provided in Subsection (10)(d)(ii), Subsections (10)(a), (b), and (c) do not  
17 apply to an improvement district bond issued after the filing of the petition.

18           (ii) Notwithstanding Subsection (10)(d)(i), Subsections (10)(a), (b), and (c) apply to an  
19 improvement district bond issued to refund a bond that was issued before the filing of the petition.

20           (e) Except as provided in Subsection (c), upon withdrawal the property within the  
21 withdrawn area is relieved of all other taxes, assessments, and charges levied by the improvement  
22 district, including taxes and charges for the payment of revenue bonds and maintenance and  
23 operation cost of the improvement district.

24           (11) (a) Each municipal legislative body adopting a resolution under Subsection (8)(a)  
25 approving the withdrawal shall:

26           (i) cause a certified copy of the resolution to be recorded in the office of the recorder of  
27 the county in which the withdrawn area is located; and

28           (ii) send written notification of the withdrawal to the State Tax Commission, including a  
29 certified copy of the resolution approving the withdrawal and evidence that the resolution has been  
30 recorded by the county recorder.

31           (b) Upon the recording of the resolution in the county recorder's office under Subsection

1 (11)(a)(i) and notification to the State Tax Commission under Subsection (11)(a)(ii), the  
2 withdrawal shall be complete, and the withdrawn area shall cease to be part of the improvement  
3 district.

4 (12) (a) After withdrawal, the improvement district shall immediately transfer to the  
5 municipality title to and possession of all assets allocated to the municipality under Subsection  
6 (7)(a).

7 (b) A transfer of assets from an improvement district to a municipality under this section  
8 shall not be considered to be a result of eminent domain action, and the provisions of Title 78,  
9 Chapter 34, Eminent Domain, do not apply to such a transfer of assets.

10 (c) Except as provided in this section, the municipality is not required to pay the  
11 improvement district any amount for the assets transferred to the municipality in connection with  
12 the withdrawal.

13 (13) (a) An improvement district or a municipality may seek judicial review of a decision  
14 of the engineering consultant or the accounting consultant by filing an action in the district court  
15 in which the proposed withdrawn area is located within 30 days after the municipal legislative  
16 body's adoption of a resolution under Subsection (8)(a)(i) approving the withdrawal.

17 (b) In an action under Subsection (13)(a), the court shall uphold the decision of the  
18 engineering consultant and the accounting consultant unless the court determines that the decision  
19 is arbitrary, capricious, or illegal.