

HB0263S01 compared with HB0263

~~{deleted text}~~ shows text that was in HB0263 but was deleted in HB0263S01.

inserted text shows text that was not in HB0263 but was inserted into HB0263S01.

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Representative David Clark proposes the following substitute bill:

LOCAL DISTRICT SERVICES AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Clark

Senate Sponsor: _____

LONG TITLE

General Description:

This bill ~~{authorizes}~~ amends provisions related to a service that a local district or ~~{a}~~ special service district ~~{to}~~ may provide ~~{control or abatement}~~ and local district board of ~~{earth movement or a landslide}~~ trustees provisions.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to a service that a local district may provide;
- ▶ authorizes a local district ~~{or}~~ board of trustees to compel the attendance of its own members;
- ▶ authorizes a person authorized by a local district to enter a premise that is provided a water system or sewer system by the local district;
- ▶ authorizes a local district to deliver, in certain circumstances, a service beyond its

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boundaries:

- ▶ amends mosquito abatement district board of trustees provisions;
- ▶ amends public transit district board of trustees provisions;
- ▶ amends provisions related to a service that a special service district ~~{to}~~may provide ~~{control or abatement of earth movement or a landslide}~~; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17B-1-202, as last amended by Laws of Utah 2010, Chapters 150 and 159

17B-1-643, as last amended by Laws of Utah 2009, First Special Session, Chapter 5

17B-2a-704, as enacted by Laws of Utah 2007, Chapter 329

17B-2a-807, as last amended by Laws of Utah 2010, Chapter 281

17D-1-201, as last amended by Laws of Utah 2009, First Special Session, Chapter 4

ENACTS:

17B-1-314, Utah Code Annotated 1953

17B-1-905, Utah Code Annotated 1953

17B-1-906, Utah Code Annotated 1953

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

Section 1. Section **17B-1-202** is amended to read:

17B-1-202. Local district may be created -- Services that may be provided --

Limitations.

(1) (a) A local district may be created as provided in this part to provide within its boundaries service consisting of:

- (i) the operation of an airport;
- (ii) the operation of a cemetery;
- (iii) fire protection, paramedic, and emergency services, including consolidated 911

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and emergency dispatch services;

- (iv) garbage collection and disposal;
- (v) health care, including health department or hospital service;
- (vi) the operation of a library;
- (vii) abatement or control of mosquitos and other insects;
- (viii) the operation of parks or recreation facilities or services;
- (ix) the operation of a sewage system;
- (x) street lighting;
- (xi) the construction and maintenance of a right-of-way, including:
 - (A) a curb;
 - (B) a gutter;
 - (C) a sidewalk;
 - (D) a street;
 - (E) a road;
 - (F) a water line;
 - (G) a sewage line;
 - (H) a storm drain;
 - (I) an electricity line;
 - (J) a communications line; or
 - (K) a natural gas line;
- (xii) transportation, including public transit and providing streets and roads;
- (xiii) the operation of a system, or one or more components of a system, for the collection, storage, retention, control, conservation, treatment, supplying, distribution, or reclamation of water, including storm, flood, sewage, irrigation, and culinary water, whether the system is operated on a wholesale or retail level or both;
- (xiv) in accordance with Subsection (1)(c), the development and execution of a groundwater management plan in cooperation with and approved by the state engineer in accordance with Section 73-5-15;
- (xv) law enforcement service; [~~or~~]
- (xvi) subject to Subsection (1)(b), the underground installation of an electric utility line or the conversion to underground of an existing electric utility line[-]; or

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(xvii) the control or abatement of earth movement or a landslide.

(b) Each local district that provides the service of the underground installation of an electric utility line or the conversion to underground of an existing electric utility line shall, in installing or converting the line, provide advance notice to and coordinate with the utility that owns the line.

(c) A groundwater management plan described in Subsection (1)(a)(xiv) may include the banking of groundwater rights by a local district in a critical management area as defined in Section 73-5-15 following the adoption of a groundwater management plan by the state engineer under Section 73-5-15.

(i) A local district may manage the groundwater rights it acquires under Subsection 17B-1-103(2)(a) or (b) consistent with the provisions of a groundwater management plan described in Subsection (1)(c).

(ii) A groundwater right held by a local district to satisfy the provisions of a groundwater management plan is not subject to the forfeiture provisions of Section 73-1-4.

(iii) (A) A local district may divest itself of a groundwater right subject to a determination that the groundwater right is not required to facilitate the groundwater management plan described in Subsection (1)(c).

(B) The groundwater right described in Subsection (1)(c)(iii)(A) is subject to Section 73-1-4 beginning on the date of divestiture.

(iv) Upon a determination by the state engineer that an area is no longer a critical management area, a water right held by the local district is subject to Section 73-1-4.

(2) For purposes of this section:

(a) "Operation" means all activities involved in providing the indicated service including acquisition and ownership of property reasonably necessary to provide the indicated service and acquisition, construction, and maintenance of facilities and equipment reasonably necessary to provide the indicated service.

(b) "System" means the aggregate of interrelated components that combine together to provide the indicated service including, for a sewage system, collection and treatment.

(3) (a) A local district may not be created to provide and may not after its creation provide more than four of the services listed in Subsection (1).

(b) Subsection (3)(a) may not be construed to prohibit a local district from providing

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more than four services if, before April 30, 2007, the local district was authorized to provide those services.

(4) (a) Except as provided in Subsection (4)(b), a local district may not be created to provide and may not after its creation provide to an area the same service already being provided to that area by another political subdivision, unless the other political subdivision gives its written consent.

(b) For purposes of Subsection (4)(a), a local district does not provide the same service as another political subdivision if it operates a component of a system that is different from a component operated by another political subdivision but within the same:

- (i) sewage system; or
- (ii) water system.

(5) (a) Except for a local district in the creation of which an election is not required under Subsection 17B-1-214(3)(c), the area of a local district may include all or part of the unincorporated area of one or more counties and all or part of one or more municipalities.

(b) The area of a local district need not be contiguous.

(6) For a local district created before May 5, 2008, the authority to provide fire protection service also includes the authority to provide:

- (a) paramedic service; and
- (b) emergency service, including hazardous materials response service.

(7) A local district created before May 11, 2010, authorized to provide the construction and maintenance of curb, gutter, or sidewalk may provide a service described in Subsection (1)(a)(xi) on or after May 11, 2010.

(8) A local district created before May 10, 2011, authorized to provide culinary, irrigation, sewage, or storm water services may provide a service described in Subsection (1)(a)(xiii) on or after May 10, 2011.

Section 2. Section 17B-1-314 is enacted to read:

17B-1-314. Compelling attendance at board meetings.

The board of trustees of a local district may:

- (1) compel the attendance of its own members at its meetings; and
- (2) provide penalties it considers necessary for the failure to attend.

Section 3. Section 17B-1-643 is amended to read:

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17B-1-643. Imposing or increasing a fee for service provided by local district.

(1) (a) Before imposing a new fee or increasing an existing fee for a service provided by a local district, each local district board of trustees shall first hold a public hearing at which any interested person may speak for or against the proposal to impose a fee or to increase an existing fee.

(b) Each public hearing under Subsection (1)(a) shall be held in the evening beginning no earlier than 6 p.m.

(c) A public hearing required under this Subsection (1) may be combined with a public hearing on a tentative budget required under Section 17B-1-610.

(d) Except to the extent that this section imposes more stringent notice requirements, the local district board shall comply with Title 52, Chapter 4, Open and Public Meetings Act, in holding the public hearing under Subsection (1)(a).

(2) (a) Each local district board shall give notice of a hearing under Subsection (1) as provided in Subsection (2)(b)(i) or ~~[(ii)]~~ (c).

(b) (i) (A) The notice required under Subsection (2)(a) shall be published:

(I) in a newspaper or combination of newspapers of general circulation in the local district, if there is a newspaper or combination of newspapers of general circulation in the local district; or

(II) if there is no newspaper or combination of newspapers of general circulation in the local district, the local district board shall post at least one notice per 1,000 population within the local district, at places within the local district that are most likely to provide actual notice to residents within the local district.

(B) The notice described in Subsection (2)(b)(i)(A)(I):

(I) shall be no less than 1/4 page in size and the type used shall be no smaller than 18 point, and surrounded by a 1/4-inch border;

(II) may not be placed in that portion of the newspaper where legal notices and classified advertisements appear;

(III) whenever possible, shall appear in a newspaper that is published at least one day per week;

(IV) shall be in a newspaper or combination of newspapers of general interest and readership in the local district, and not of limited subject matter; and

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(V) shall be run once each week for the two weeks preceding the hearing.

(ii) The notice described in Subsection (2)(b)(i)(A) shall state that the local district board intends to impose or increase a fee for a service provided by the local district and will hold a public hearing on a certain day, time, and place fixed in the notice, which shall be not less than seven days after the day the first notice is published, for the purpose of hearing comments regarding the proposed imposition or increase of a fee and to explain the reasons for the proposed imposition or increase.

(c) (i) In lieu of providing notice under Subsection (2)(b), the local district board of trustees may give the notice required under Subsection (2)(a) by mailing the notice to those within the district who:

(A) will be charged the fee for a district service, if the fee is being imposed for the first time; or

(B) are being charged a fee, if the fee is proposed to be increased.

(ii) Each notice under Subsection (2)(c)(i) shall comply with Subsection (2)(b)(ii).

(iii) A notice under Subsection (2)(c)(i) may accompany a district bill for an existing fee.

(d) If the hearing required under this section is combined with the public hearing required under Section 17B-1-610, the notice requirement under this Subsection (2) is satisfied if a notice that meets the requirements of Subsection (2)(b)(ii) is combined with the notice required under Section 17B-1-609.

(e) Proof that notice was given as provided in Subsection (2)(b) or (c) is prima facie evidence that notice was properly given.

(f) If no challenge is made to the notice given of a hearing required by Subsection (1) within 30 days after the date of the hearing, the notice is considered adequate and proper.

(3) After holding a public hearing under Subsection (1), a local district board may:

(a) impose the new fee or increase the existing fee as proposed;

(b) adjust the amount of the proposed new fee or the increase of the existing fee and then impose the new fee or increase the existing fee as adjusted; or

(c) decline to impose the new fee or increase the existing fee.

(4) This section applies to each new fee imposed and each increase of an existing fee that occurs on or after July 1, 1998.

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(5) (a) This section does not apply to an impact fee.

(b) The imposition or increase of an impact fee is governed by Title 11, Chapter 36, Impact Fees Act.

Section 4. Section 17B-1-905 is enacted to read:

17B-1-905. Right of entry on premises of water user.

A person authorized by a local district that provides a service from a water system or sewer system may enter upon a premise furnished with or provided that water service or sewer service to:

(1) examine an apparatus related to or used by the water system or sewer system;

(2) examine the amount of water used or wastewater discharged by the water system or sewer system and the manner of use or discharge; or

(3) make a necessary shutoff for vacancy, delinquency, or a violation of a local district rule or regulation relating to the water service or sewer service.

Section 5. Section 17B-1-906 is enacted to read:

17B-1-906. Extraterritorial supply of surplus.

If a local district runs a surplus product or surplus capacity of a service that the local district is authorized to provide under Section 17B-1-202, the local district may sell or deliver the product or service to others beyond the local district boundaries.

Section 6. Section 17B-2a-704 is amended to read:

17B-2a-704. Mosquito abatement district board of trustees.

(1) (a) Notwithstanding Subsection 17B-1-302(2) and subject to Subsection (1)(b), the legislative body of each municipality that is entirely or partly included within a mosquito abatement district shall appoint one member to the board of trustees.

(b) If 75% or more of the area of a mosquito abatement district is within the boundaries of a single municipality:

(i) the board of trustees shall consist of five members; and

(ii) the legislative body of that municipality shall appoint all five members of the board.

(2) The legislative body of each county in which a mosquito abatement district is located shall appoint at least one member but no more than three members to the district's board of trustees [if] as follows:

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(a) one member may be appointed if:

~~[(a)]~~ (i) some or all of the county's unincorporated area is included within the boundaries of the mosquito abatement district and Subsection (2)(b) does not apply; or

~~[(b)(i)]~~ (ii) (A) the number of municipalities that are entirely or partly included within the district is an even number less than nine; and

~~[(ii)]~~ (B) Subsection (1)(b) does not apply~~†~~.

~~(3)~~ [-]; or

(b) subject to Subsection (3), up to and including three members may be appointed if:

(i) more than 25% of the population of the mosquito abatement district resides outside the boundaries of all municipalities that may appoint members to the board of trustees; and

(ii) at least four members of the board of trustees are appointed by a municipality.

(3) A member appointed in accordance with Subsection (2)(b) may not reside within a municipality that may appoint a member to the board of trustees.

~~[(3)]~~ (4) If the number of board members appointed by application of Subsections (1) and (2)(a) is an even number less than nine, the legislative body of the county in which the district is located shall appoint an additional member.

~~[(4)]~~ (5) Each board of trustees member shall be appointed as provided in Section 17B-1-304.

~~[(5)]~~ (6) Each vacancy on a mosquito abatement district board of trustees shall be filled by the applicable appointing authority as provided in Section 17B-1-304.

Section 7. Section 17B-2a-807 is amended to read:

17B-2a-807. Public transit district board of trustees -- Appointment -- Apportionment -- Qualifications -- Quorum -- Compensation -- Terms.

(1) (a) If 200,000 people or fewer reside within the boundaries of a public transit district, the board of trustees shall consist of members appointed by the legislative bodies of each municipality, county, or unincorporated area within any county on the basis of one member for each full unit of regularly scheduled passenger routes proposed to be served by the district in each municipality or unincorporated area within any county in the following calendar year.

(b) For purposes of determining membership under Subsection (1)(a), the number of service miles comprising a unit shall be determined jointly by the legislative bodies of the

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municipalities or counties comprising the district.

(c) The board of trustees of a public transit district under this Subsection (1) may include a member that is a commissioner on the Transportation Commission created in Section 72-1-301 and appointed as provided in Subsection (11), who shall serve as a nonvoting, ex officio member.

(d) Members appointed under this Subsection (1) shall be appointed and added to the board or omitted from the board at the time scheduled routes are changed, or as municipalities, counties, or unincorporated areas of counties annex to or withdraw from the district using the same appointment procedures.

(e) For purposes of appointing members under this Subsection (1), municipalities, counties, and unincorporated areas of counties in which regularly scheduled passenger routes proposed to be served by the district in the following calendar year is less than a full unit, as defined in Subsection (1)(b), may combine with any other similarly situated municipality or unincorporated area to form a whole unit and may appoint one member for each whole unit formed.

(2) (a) Subject to Section 17B-2a-807.5, if more than 200,000 people reside within the boundaries of a public transit district, the board of trustees shall consist of:

(i) 11 members:

(A) appointed as described under this Subsection (2); or

(B) retained in accordance with Section 17B-2a-807.5;

(ii) three members appointed as described in Subsection (4); and

(iii) one voting member appointed as provided in Subsection (11).

(b) Except as provided in Subsections (2)(c) and (d), the board shall apportion voting members to each county within the district using an average of:

(i) the proportion of population included in the district and residing within each county, rounded to the nearest 1/11 of the total transit district population; and

(ii) the cumulative proportion of transit sales and use tax collected from areas included in the district and within each county, rounded to the nearest 1/11 of the total cumulative transit sales and use tax collected for the transit district.

(c) The board shall join an entire or partial county not apportioned a voting member under this Subsection (2) with an adjacent county for representation. The combined

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apportionment basis included in the district of both counties shall be used for the apportionment.

(d) (i) If rounding to the nearest 1/11 of the total public transit district apportionment basis under Subsection (2)(b) results in an apportionment of more than 11 members, the county or combination of counties with the smallest additional fraction of a whole member proportion shall have one less member apportioned to it.

(ii) If rounding to the nearest 1/11 of the total public transit district apportionment basis under Subsection (2)(b) results in an apportionment of less than 11 members, the county or combination of counties with the largest additional fraction of a whole member proportion shall have one more member apportioned to it.

(e) If the population in the unincorporated area of a county is at least 140,000, the county executive, with the advice and consent of the county legislative body, shall appoint one voting member to represent the population within a county's unincorporated area.

(f) If a municipality's population is at least 160,000, the chief municipal executive, with the advice and consent of the municipal legislative body, shall appoint one voting member to represent the population within a municipality.

(g) (i) The number of voting members appointed from a county and municipalities within a county under Subsections (2)(e) and (f) shall be subtracted from the county's total voting member apportionment under this Subsection (2).

(ii) Notwithstanding Subsections (2)(l) and (10), no more than one voting member appointed by an appointing entity may be a locally elected public official.

(h) If the entire county is within the district, the remaining voting members for the county shall represent the county or combination of counties, if Subsection (2)(c) applies, or the municipalities within the county.

(i) If the entire county is not within the district, and the county is not joined with another county under Subsection (2)(c), the remaining voting members for the county shall represent a municipality or combination of municipalities.

(j) (i) Except as provided under Subsections (2)(e) and (f), voting members representing counties, combinations of counties if Subsection (2)(c) applies, or municipalities within the county shall be designated and appointed by a simple majority of the chief executives of the municipalities within the county or combinations of counties if Subsection

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(2)(c) applies.

(ii) The appointments shall be made by joint written agreement of the appointing municipalities, with the consent and approval of the county legislative body of the county that has at least 1/11 of the district's apportionment basis.

(k) Voting members representing a municipality or combination of municipalities shall be designated and appointed by the chief executive officer of the municipality or simple majority of chief executive officers of municipalities with the consent of the legislative body of the municipality or municipalities.

(l) The appointment of voting members shall be made without regard to partisan political affiliation from among citizens in the community.

(m) Each voting member shall be a bona fide resident of the municipality, county, or unincorporated area or areas which the voting member is to represent for at least six months before the date of appointment, and must continue in that residency to remain qualified to serve as a voting member.

(n) (i) All population figures used under this section shall be derived from the most recent official census or census estimate of the United States Bureau of the Census.

(ii) If population estimates are not available from the United States Bureau of Census, population figures shall be derived from the estimate from the Utah Population Estimates Committee.

(iii) All transit sales and use tax totals shall be obtained from the State Tax Commission.

(o) (i) The board shall be apportioned as provided under this section in conjunction with the decennial United States Census Bureau report every 10 years.

(ii) Within 120 days following the receipt of the population estimates under this Subsection (2)(o), the district shall reapportion representation on the board of trustees in accordance with this section.

(iii) The board shall adopt by resolution a schedule reflecting the current and proposed apportionment.

(iv) Upon adoption of the resolution, the board shall forward a copy of the resolution to each of its constituent entities as defined under Section 17B-1-701.

(v) The appointing entities gaining a new board member shall appoint a new member

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within 30 days following receipt of the resolution.

(vi) The appointing entities losing a board member shall inform the board of which member currently serving on the board will step down:

- (A) upon appointment of a new member under Subsection (2)(o)(v); or
- (B) in accordance with Section 17B-2a-807.5.

(3) Upon the completion of an annexation to a public transit district under Chapter 1, Part 4, Annexation, the annexed area shall have a representative on the board of trustees on the same basis as if the area had been included in the district as originally organized.

(4) In addition to the voting members appointed in accordance with Subsection (2), the board shall consist of three voting members appointed as follows:

- (a) one member appointed by the speaker of the House of Representatives;
- (b) one member appointed by the president of the Senate; and
- (c) one member appointed by the governor.

(5) ~~[(a)]~~ Except as provided in Section 17B-2a-807.5, the terms of office of the voting members of the board shall be four years or until a successor is appointed, qualified, seated, and has taken the oath of office.

~~[(b) (i) A voting member may not be appointed for more than three successive full terms regardless of the appointing entity that appoints the voting member.]~~

~~[(ii) A person:]~~

~~[(A) may serve no more than 12 years on a public transit district board of trustees described in Subsection (2)(a) regardless of the appointing entity that appoints the member; and]~~

~~[(B) that has served 12 years on a public transit district board of trustees described in Subsection (2)(a) is ineligible for reappointment to a public transit board of trustees described in Subsection (2)(a).]~~

(6) (a) Vacancies for voting members shall be filled by the official appointing the member creating the vacancy for the unexpired term, unless the official fails to fill the vacancy within 90 days.

(b) If the appointing official under Subsection (1) does not fill the vacancy within 90 days, the board of trustees of the authority shall fill the vacancy.

(c) If the appointing official under Subsection (2) does not fill the vacancy within 90

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days, the governor, with the advice and consent of the Senate, shall fill the vacancy.

(7) (a) Each voting member may cast one vote on all questions, orders, resolutions, and ordinances coming before the board of trustees.

(b) A majority of all voting members of the board of trustees are a quorum for the transaction of business.

(c) The affirmative vote of a majority of all voting members present at any meeting at which a quorum was initially present shall be necessary and, except as otherwise provided, is sufficient to carry any order, resolution, ordinance, or proposition before the board of trustees.

(8) Each public transit district shall pay to each voting member:

(a) an attendance fee of \$50 per board or committee meeting attended, not to exceed \$200 in any calendar month to any voting member; and

(b) reasonable mileage and expenses necessarily incurred to attend board or committee meetings.

(9) (a) Members of the initial board of trustees shall convene at the time and place fixed by the chief executive officer of the entity initiating the proceedings.

(b) The board of trustees shall elect from its voting membership a chair, vice chair, and secretary.

(c) The members elected under Subsection (9)(b) shall serve for a period of two years or until their successors shall be elected and qualified.

(d) On or after January 1, 2011, a locally elected public official is not eligible to serve as the chair, vice chair, or secretary of the board of trustees.

(10) Except as otherwise authorized under Subsection (2)(g) and Section 17B-2a-807.5, at the time of a voting member's appointment or during a voting member's tenure in office, a voting member may not hold any employment, except as an independent contractor or locally elected public official, with a county or municipality within the district.

(11) The Transportation Commission created in Section 72-1-301:

(a) for a public transit district serving a population of 200,000 people or fewer, may appoint a commissioner of the Transportation Commission to serve on the board of trustees as a nonvoting, ex officio member; and

(b) for a public transit district serving a population of more than 200,000 people, shall appoint a commissioner of the Transportation Commission to serve on the board of trustees as

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a voting member.

(12) (a) (i) Each member of the board of trustees of a public transit district is subject to recall at any time by the legislative body of the county or municipality from which the member is appointed.

(ii) Each recall of a board of trustees member shall be made in the same manner as the original appointment.

(iii) The legislative body recalling a board of trustees member shall provide written notice to the member being recalled.

(b) Upon providing written notice to the board of trustees, a member of the board may resign from the board of trustees.

(c) Except as provided in Section 17B-2a-807.5, if a board member is recalled or resigns under this Subsection (12), the vacancy shall be filled as provided in Subsection (6).

Section ~~(2)8~~. 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

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(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 facilities, traditional governmental services, and planning, as a means for mitigating impacts from extractive mineral industries; ~~and~~

(15) in a county of the first class, extended police protection~~[-];~~ or

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

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Legislative Review Note

~~as of 1-31-11 10:11 AM~~

~~Office of Legislative Research and General Counsel}~~