

LOCAL AND SPECIAL SERVICE DISTRICTS

AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jerry W. Stevenson

House Sponsor: Stephen G. Handy

LONG TITLE

General Description:

This bill amends provisions related to a local district and a special service district.

Highlighted Provisions:

This bill:

- ▶ amends procurement provisions governing a political subdivision;
- ▶ authorizes a local district to operate and maintain a correctional or rehabilitative facility;
- ▶ enacts provisions prohibiting the creation of a local district in certain circumstances;
- ▶ enacts provisions that require the dissolution of a local district in certain circumstances,
- ▶ amends provisions that govern the terms of office of a local district board of trustees;
- ▶ permits a member of the board of trustees to continue to serve until a successor is elected or appointed;
- ▶ amends provisions related to the election of a local district board member;
- ▶ amends provisions related to compensation paid to a member of the board of trustees;
- ▶ prohibits a board of trustees from adopting certain bylaws or rules in certain circumstances;



- 28 ▶ amends provisions governing employment of a member of the board of trustees by a
- 29 local district;
- 30 ▶ amends provisions related to a local district audit;
- 31 ▶ authorizes a special service district to provide cemetery services;
- 32 ▶ amends provisions related to filling a midterm vacancy on a local district board;
- 33 ▶ exempts a public transit district from certain licensure requirements; and
- 34 ▶ makes technical and conforming amendments.

35 **Money Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

- 41 **11-39-107 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347
- 42 **17B-1-202**, as last amended by Laws of Utah 2012, Chapter 97
- 43 **17B-1-217**, as renumbered and amended by Laws of Utah 2007, Chapter 329
- 44 **17B-1-303**, as last amended by Laws of Utah 2012, Chapter 97
- 45 **17B-1-304**, as last amended by Laws of Utah 2012, Chapter 97
- 46 **17B-1-306**, as last amended by Laws of Utah 2012, Chapter 97
- 47 **17B-1-307**, as last amended by Laws of Utah 2010, Chapter 286
- 48 **17B-1-310**, as last amended by Laws of Utah 2011, Chapter 107
- 49 **17B-1-311**, as renumbered and amended by Laws of Utah 2007, Chapter 329
- 50 **17B-1-639**, as last amended by Laws of Utah 2009, Chapter 323
- 51 **17B-1-640**, as renumbered and amended by Laws of Utah 2007, Chapter 329
- 52 **17D-1-201**, as last amended by Laws of Utah 2011, Chapter 106
- 53 **20A-1-512**, as last amended by Laws of Utah 2011, Chapter 40
- 54 **62A-2-110**, as last amended by Laws of Utah 2005, Chapter 188

55 ENACTS:

56 **17B-1-218**, Utah Code Annotated 1953



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

59 Section 1. Section **11-39-107 (Effective 05/01/13)** is amended to read:

60 **11-39-107 (Effective 05/01/13). Procurement code.**

61 (1) This chapter may not be construed to:

62 (a) prohibit a county or municipal legislative body from adopting the procedures of the
63 procurement code; or

64 (b) limit the application of the procurement code to a local district or special service
65 district.

66 (2) A local entity may adopt procedures for the following construction contracting
67 methods:

68 (a) construction manager/general contractor, as defined in Section 63G-6a-103; or

69 (b) a method that requires that the local entity draft a plan, specifications, and an
70 estimate for the building improvement or public works project.

71 (3) For a public works project only and that costs [~~\$10,000,000~~] \$1,000,000 or more,
72 the following may enter into a contract for design-build, as defined in Section 63G-6a-103, and
73 adopt the procedures and follow the provisions of the procurement code for the procurement of
74 and as the procedures and provisions relate to a design-build:

75 (a) a city of the first class;

76 (b) a local district; or

77 (c) a special service district.

78 (4) (a) In seeking bids and awarding a contract for a building improvement or public
79 works project, a county or a municipal legislative body may elect to follow the provisions of
80 the procurement code, as the county or municipal legislative body considers appropriate under
81 the circumstances, for specification preparation, source selection, or contract formation.

82 (b) A county or municipal legislative body's election to adopt the procedures of the
83 procurement code may not excuse the county or municipality, respectively, from complying
84 with the requirements to award a contract for work in excess of the bid limit and to publish
85 notice of the intent to award.

86 (c) An election under Subsection (4)(a) may be made on a case-by-case basis, unless
87 the county or municipality has previously adopted the provisions of Title 63G, Chapter 6a,
88 Utah Procurement Code.

89 (d) The county or municipal legislative body shall:

- 90 (i) make each election under Subsection (4)(a) in an open meeting; and
- 91 (ii) specify in its action the portions of the procurement code to be followed.
- 92 (5) If the estimated cost of the building improvement or public works project proposed
- 93 by a local district or special service district exceeds the bid limit, the governing body of the
- 94 local district or special service district may, if it determines to proceed with the building
- 95 improvement or public works project, use the competitive procurement procedures of the
- 96 procurement code in place of the comparable provisions of this chapter.

97 Section 2. Section **17B-1-202** is amended to read:

98 **17B-1-202. Local district may be created -- Services that may be provided --**
99 **Limitations.**

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

- 102 (i) the operation of an airport;
- 103 (ii) the operation of a cemetery;
- 104 (iii) fire protection, paramedic, and emergency services, including consolidated 911
105 and emergency dispatch services;
- 106 (iv) garbage collection and disposal;
- 107 (v) health care, including health department or hospital service;
- 108 (vi) the operation of a library;
- 109 (vii) abatement or control of mosquitos and other insects;
- 110 (viii) the operation of parks or recreation facilities or services;
- 111 (ix) the operation of a sewage system;
- 112 (x) the construction and maintenance of a right-of-way, including:
 - 113 (A) a curb;
 - 114 (B) a gutter;
 - 115 (C) a sidewalk;
 - 116 (D) a street;
 - 117 (E) a road;
 - 118 (F) a water line;
 - 119 (G) a sewage line;
 - 120 (H) a storm drain;

- 121 (I) an electricity line;
- 122 (J) a communications line;
- 123 (K) a natural gas line; or
- 124 (L) street lighting;
- 125 (xi) transportation, including public transit and providing streets and roads;
- 126 (xii) the operation of a system, or one or more components of a system, for the
- 127 collection, storage, retention, control, conservation, treatment, supplying, distribution, or
- 128 reclamation of water, including storm, flood, sewage, irrigation, and culinary water, whether
- 129 the system is operated on a wholesale or retail level or both;
- 130 (xiii) in accordance with Subsection (1)(c), the acquisition or assessment of a
- 131 groundwater right for the development and execution of a groundwater management plan in
- 132 cooperation with and approved by the state engineer in accordance with Section 73-5-15;
- 133 (xiv) law enforcement service;
- 134 (xv) the operation and maintenance of a correctional or rehabilitative facility or
- 135 program for municipal, state, or other detainees and prisoners;
- 136 [~~xvi~~] (xvi) subject to Subsection (1)(b), the underground installation of an electric
- 137 utility line or the conversion to underground of an existing electric utility line;
- 138 [~~xvii~~] (xvii) the control or abatement of earth movement or a landslide; or
- 139 [~~xviii~~] (xviii) the operation of animal control services and facilities.
- 140 (b) Each local district that provides the service of the underground installation of an
- 141 electric utility line or the conversion to underground of an existing electric utility line shall, in
- 142 installing or converting the line, provide advance notice to and coordinate with the utility that
- 143 owns the line.
- 144 (c) A groundwater management plan described in Subsection (1)(a)(xiii) may include
- 145 the banking of groundwater rights by a local district in a critical management area as defined in
- 146 Section 73-5-15 following the adoption of a groundwater management plan by the state
- 147 engineer under Section 73-5-15.
- 148 (i) A local district may manage the groundwater rights it acquires under Subsection
- 149 17B-1-103(2)(a) or (b) consistent with the provisions of a groundwater management plan
- 150 described in this Subsection (1)(c).
- 151 (ii) A groundwater right held by a local district to satisfy the provisions of a

152 groundwater management plan is not subject to the forfeiture provisions of Section 73-1-4.

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

156 (B) The groundwater right described in Subsection (1)(c)(iii)(A) is subject to Section
157 73-1-4 beginning on the date of divestiture.

158 (iv) Upon a determination by the state engineer that an area is no longer a critical
159 management area as defined in Section 73-5-15, a groundwater right held by the local district is
160 subject to Section 73-1-4.

161 (v) A local district created in accordance with Subsection (1)(a)(xiii) to develop and
162 execute a groundwater management plan may hold or acquire a right to surface waters that are
163 naturally tributary to the groundwater basin subject to the groundwater management plan if the
164 surface waters are appropriated in accordance with Title 73, Water and Irrigation, and used in
165 accordance with Title 73, Chapter 3b, Groundwater Recharge and Recovery Act.

166 (2) For purposes of this section:

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

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

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

175 (b) Subsection (3)(a) may not be construed to prohibit a local district from providing
176 more than four services if, before April 30, 2007, the local district was authorized to provide
177 those services.

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

182 (b) For purposes of Subsection (4)(a), a local district does not provide the same service

183 as another political subdivision if it operates a component of a system that is different from a
 184 component operated by another political subdivision but within the same:

185 (i) sewage system; or

186 (ii) water system.

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

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

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

193 (a) paramedic service; and

194 (b) emergency service, including hazardous materials response service.

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

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

201 (9) A local district may not be created under this chapter for two years after the date on
 202 which a local district is dissolved as provided in Section 17B-1-217 if the local district
 203 proposed for creation:

204 (a) provides the same or a substantially similar service as the dissolved local district;

205 and

206 (b) is located in substantially the same area as the dissolved local district.

207 Section 3. Section **17B-1-217** is amended to read:

208 **17B-1-217. Activity required -- Dissolution -- Conclusive presumption regarding**
 209 **creation and existence.**

210 (1) A local district that is not engaged in one or more of the following activities,
 211 services, or duties is subject to dissolution in accordance with Subsections (5) and (6):

212 (a) levying and collecting a tax;

213 (b) providing a commodity or service;

214 (c) collecting a fee or charging an assessment for a commodity, service, facility, or
215 improvement provided by the local district;

216 (d) undertaking planning necessary for the provision of a commodity, service, facility,
217 or improvement as reflected in a written study or report;

218 (e) acquiring or maintaining property or an easement necessary for a service, facility, or
219 improvement to be provided by the local district in accordance with a general or master plan
220 adopted by the district;

221 (f) constructing, installing, maintaining, owning, or operating infrastructure for the
222 provision of a commodity, service, facility, or improvement; or

223 (g) legally incurring debt, contracting, or otherwise being obligated to provide a
224 commodity, service, facility, or improvement within a reasonable period of time.

225 (2) For a local district created after May 14, 2013, the local district shall file with the
226 state auditor a written certification:

227 (a) declaring that the district is engaged in an activity, service, or duty described in
228 Subsection (1);

229 (b) identifying the activity in which the local district is engaged; and

230 (c) no sooner than five years after the date on which a local district is created as
231 reflected in the certificate of incorporation issued by the lieutenant governor under Section
232 67-1a-6.5.

233 (3) (a) The state auditor shall send a deficiency notice in accordance with Subsection
234 (3)(c) if:

235 (i) a local district fails to deliver a certification in accordance with Subsection (2); or

236 (ii) the state auditor determines that, subject to Subsection (3)(b), a local district
237 created after January 1, 2005, and before May 15, 2013, is not engaged in an activity, service,
238 or duty required under Subsection (1) within five years after the date on which the local district
239 is created as reflected in the certificate of incorporation issued by the lieutenant governor under
240 Section 67-1a-6.5 or thereafter.

241 (b) The state auditor shall make a determination described in Subsection (3)(a)(ii)
242 based on:

243 (i) the local district's failure to file a required annual financial report with the state
244 auditor in accordance with Section 17B-1-639; or

245 (ii) subject to Subsection (7), other credible information related to Subsection (1).
246 (c) (i) The state auditor shall send the deficiency notice to the local district and the
247 Utah Association of Special Districts.
248 (ii) The deficiency notice shall state that the local district is required to file with the
249 state auditor a written certification:
250 (A) declaring that the district was and continues to be engaged in an activity, service,
251 or duty described in Subsection (1) prior to the date of the deficiency notice; and
252 (B) identifying the activity in which the local district is engaged.
253 (4) If within four months of receiving a deficiency notice, a local district fails to file a
254 written certification with the state auditor in accordance with Subsection (2) or (3)(c)(ii), the
255 state auditor shall, in writing:
256 (a) notify the lieutenant governor that the local district has failed to meet the
257 requirements of this section and specify the reason for the district's failure; and
258 (b) request that the lieutenant governor dissolve the local district in accordance with
259 Subsections (5) and (6).
260 (5) If the lieutenant governor receives a request to dissolve a local district from the
261 state auditor in accordance with Subsection (4), the lieutenant governor shall:
262 (a) issue a certification of dissolution under Section 67-1a-6.5; and
263 (b) send a copy of the certification of dissolution to:
264 (i) the state auditor;
265 (ii) the State Tax Commission;
266 (iii) the recorder of the county in which the local district is located, or, if the local
267 district is located in more than one county, the recorder of each county in which the local
268 district is located;
269 (iv) the last known address of the local district; and
270 (v) the Utah Association of Special Districts.
271 (6) A local district identified in a certification of dissolution is dissolved:
272 (a) upon recordation of the certification by the county recorder; or
273 (b) if the local district is located within more than one county, upon recordation of the
274 certification by the county recorder of the last county to record.
275 (7) Notwithstanding any other provision of law, a local district shall be conclusively

276 presumed to have been lawfully created [~~and~~], existing, and active if for two years following
277 the district's creation under Subsection 17B-1-215(4):

278 [~~(+)~~] (a) the district has:

279 [~~(a)~~] (i) levied and collected a tax; or

280 [~~(b)~~] (ii) collected a fee, charge, or assessment for a commodity, service, facility, or
281 improvement provided by the district; and

282 [~~(2)~~] (b) no challenge has been filed in court to the existence or creation of the district.

283 Section 4. Section **17B-1-218** is enacted to read:

284 **17B-1-218. Municipal authority to provide temporary jail facilities.**

285 Notwithstanding the creation of a local district to provide correctional services as
286 provided in Subsection 17B-1-202(1)(a)(xv), a municipality may provide, operate, and
287 maintain a facility for temporary confinement in accordance with Section 10-8-58.

288 Section 5. Section **17B-1-303** is amended to read:

289 **17B-1-303. Term of board of trustees members -- Oath of office -- Bond.**

290 (1) (a) Except as provided in [~~Subsection~~] Subsections (1)(b) and (c), the term of each
291 member of a board of trustees shall begin at noon on the January 1 following the member's
292 election or appointment.

293 (b) The term of each member of the initial board of trustees of a newly created local
294 district shall begin:

295 (i) upon appointment, for an appointed member; and

296 (ii) upon the member taking the oath of office after the canvass of the election at which
297 the member is elected, for an elected member.

298 (c) The term of each water conservancy district board member appointed by the
299 governor as provided in Subsection 17B-2a-1005(2)(c) shall begin on the date on which the
300 senate consents to the appointment.

301 (2) (a) (i) Subject to Subsection (2)(a)(ii), the term of each member of a board of
302 trustees shall be four years, except that approximately half the members of the initial board of
303 trustees, chosen by lot, shall serve a two-year term so that the term of approximately half the
304 board members expires every two years.

305 (ii) (A) If the terms of members of the initial board of trustees of a newly created local
306 district do not begin on January 1 because of application of Subsection (1)(b), the terms of

307 those members shall be adjusted as necessary, subject to Subsection (2)(a)(ii)(B), to result in
308 the terms of their successors complying with:

309 (I) the requirement under Subsection (1)(a) for a term to begin on January 1 following
310 a member's election or appointment; and

311 (II) the requirement under Subsection (2)(a)(i) that terms be four years.

312 (B) An adjustment under Subsection (2)(a)(ii)(A) may not add more than a year to or
313 subtract more than a year from a member's term.

314 (b) Each board of trustees member shall serve until a successor is duly elected or
315 appointed and qualified, unless the member earlier is removed from office or resigns or
316 otherwise leaves office.

317 (c) If a member of a board of trustees no longer meets the qualifications of Subsection
318 17B-1-302(1), or if the member's term expires without a duly elected or appointed successor:

319 (i) the member's position is considered vacant, subject to Subsection (2)(c)(ii); and

320 (ii) the member may continue to serve until a successor is duly elected or appointed
321 and qualified.

322 (3) (a) (i) Before entering upon the duties of office, each member of a board of trustees
323 shall take the oath of office specified in Utah Constitution Article IV, Section 10.

324 (ii) An oath of office may be administered by a judge, county clerk, notary public, or
325 the local district clerk.

326 (b) Each oath of office shall be filed with the clerk of the local district.

327 (c) The failure of a board of trustees member to take the oath required by Subsection
328 (3)(a) does not invalidate any official act of that member.

329 (4) A board of trustees member is not limited in the number of terms the member may
330 serve.

331 (5) Except as provided in Subsection (6), each midterm vacancy in a board of trustees
332 position shall be filled as provided in Section 20A-1-512.

333 (6) (a) For purposes of this Subsection (6):

334 (i) "Appointed official" means a person who:

335 (A) is appointed as a member of a local district board of trustees by a county or
336 municipality entitled to appoint a member to the board; and

337 (B) holds an elected position with the appointing county or municipality.

338 (ii) "Appointing entity" means the county or municipality that appointed the appointed
339 official to the board of trustees.

340 (b) The board of trustees shall declare a midterm vacancy for the board position held
341 by an appointed official if:

342 (i) during the appointed official's term on the board of trustees, the appointed official
343 ceases to hold the elected position with the appointing entity; and

344 (ii) the appointing entity submits a written request to the board to declare the vacancy.

345 (c) Upon the board's declaring a midterm vacancy under Subsection (6)(b), the
346 appointing entity shall appoint another person to fill the remaining unexpired term on the board
347 of trustees.

348 (7) (a) Each member of a board of trustees shall give a bond for the faithful
349 performance of the member's duties, in the amount and with the sureties prescribed by the
350 board of trustees.

351 (b) The local district shall pay the cost of each bond required under Subsection (7)(a).
352 Section 6. Section **17B-1-304** is amended to read:

353 **17B-1-304. Appointment procedures for appointed members.**

354 (1) The appointing authority may, by resolution, appoint persons to serve as members
355 of a local district board by following the procedures established by this section.

356 (2) (a) In any calendar year when appointment of a new local district board member is
357 required, the appointing authority shall prepare a notice of vacancy that contains:

358 (i) the positions that are vacant that shall be filled by appointment;

359 (ii) the qualifications required to be appointed to those positions;

360 (iii) the procedures for appointment that the governing body will follow in making
361 those appointments; and

362 (iv) the person to be contacted and any deadlines that a person shall meet who wishes
363 to be considered for appointment to those positions.

364 (b) The appointing authority shall:

365 (i) post the notice of vacancy in four public places within the local district at least one
366 month before the deadline for accepting nominees for appointment; and

367 (ii) (A) publish the notice of vacancy:

368 (I) in a daily newspaper of general circulation within the local district for five

369 consecutive days before the deadline for accepting nominees for appointment; or

370 (II) in a local weekly newspaper circulated within the local district in the week before
371 the deadline for accepting nominees for appointment; and

372 (B) in accordance with Section 45-1-101 for five days before the deadline for accepting
373 nominees for appointment.

374 (c) The appointing authority may bill the local district for the cost of preparing,
375 printing, and publishing the notice.

376 (3) (a) Not sooner than two months after the appointing authority is notified of the
377 vacancy, the appointing authority shall select a person to fill the vacancy from the applicants
378 who meet the qualifications established by law.

379 (b) The appointing authority shall:

380 (i) comply with Title 52, Chapter 4, Open and Public Meetings Act, in making the
381 appointment;

382 (ii) allow any interested persons to be heard; and

383 (iii) adopt a resolution appointing a person to the local district board.

384 (c) If no candidate for appointment to fill the vacancy receives a majority vote of the
385 appointing authority, the appointing authority shall select the appointee from the two top
386 candidates by lot.

387 (4) Persons appointed to serve as members of the local district board serve four-year
388 terms, but may be removed for cause at any time after a hearing by two-thirds vote of the
389 appointing body.

390 (5) (a) At the end of each board member's term, the position is considered vacant and
391 the appointing authority may either reappoint the old board member or appoint a new member
392 after following the appointment procedures established in this section.

393 (b) Notwithstanding Subsection (5)(a), a board member may continue to serve until a
394 successor is duly elected or appointed and qualified in accordance with Subsection
395 17B-1-303(2)(b).

396 (6) Notwithstanding any other provision of this section, if the appointing authority
397 appoints one of its own members, it need not comply with Subsection (2) or (3).

398 Section 7. Section **17B-1-306** is amended to read:

399 **17B-1-306. Local district board -- Election procedures.**

400 (1) Except as provided in Subsection (11), each elected board member shall be selected
401 as provided in this section.

402 (2) (a) Each election of a local district board member shall be held:

403 (i) at the same time as the municipal general election; and

404 (ii) at polling places designated by the county clerk in consultation with the local
405 district for each county in which the local district is located, which polling places shall coincide
406 with municipal general election polling places whenever feasible.

407 (b) The county clerk may consolidate two or more polling places to enable voters from
408 more than one district to vote at one consolidated polling place.

409 ~~[(b)]~~ (c) (i) Subject to Subsections (4)(f) and (g), the number of polling places under
410 Subsection (2)(a)(ii) in an election of board members of an irrigation district shall be one
411 polling place per division of the district, designated by the district board.

412 (ii) Each polling place designated by an irrigation district board under Subsection
413 (2)~~[(b)]~~(c)(i) shall coincide with a polling place designated by the county clerk under
414 Subsection (2)(a)(ii).

415 (3) (a) The clerk of each local district with a board member position to be filled at the
416 next municipal general election shall provide notice of:

417 (i) each elective position of the local district to be filled at the next municipal general
418 election;

419 (ii) the constitutional and statutory qualifications for each position; and

420 (iii) the dates and times for filing a declaration of candidacy.

421 (b) The notice required under Subsection (3)(a) shall be:

422 (i) posted in at least five public places within the local district at least 10 days before
423 the first day for filing a declaration of candidacy; or

424 (ii) (A) published in a newspaper of general circulation within the local district at least
425 three but no more than 10 days before the first day for filing a declaration of candidacy; and

426 (B) published, in accordance with Section 45-1-101, for 10 days before the first day for
427 filing a declaration of candidacy.

428 (4) (a) To become a candidate for an elective local district board position, the
429 prospective candidate shall file a declaration of candidacy in person with the local district,
430 during office hours and not later than the close of normal office hours between June 1 and June

431 15 of any odd-numbered year.

432 (b) When June 15 is a Saturday, Sunday, or holiday, the filing time shall be extended
433 until the close of normal office hours on the following regular business day.

434 (c) (i) Before the filing officer may accept any declaration of candidacy, the filing
435 officer shall:

436 (A) read to the prospective candidate the constitutional and statutory qualification
437 requirements for the office that the candidate is seeking; and

438 (B) require the candidate to state whether or not the candidate meets those
439 requirements.

440 (ii) If the prospective candidate does not meet the qualification requirements for the
441 office, the filing officer may not accept the declaration of candidacy.

442 (iii) If it appears that the prospective candidate meets the requirements of candidacy,
443 the filing officer shall accept the declaration of candidacy.

444 (d) The declaration of candidacy shall substantially comply with the following form:

445 "I, (print name) _____, being first duly sworn, say that I reside at (Street)
446 _____, City of _____, County of _____, State of Utah,
447 (Zip Code) _____, (Telephone Number, if any) _____; that I meet the qualifications
448 for the office of board of trustees member for _____ (state the name of
449 the local district); that I am a candidate for that office to be voted upon at the next election, and
450 I hereby request that my name be printed upon the official ballot for that election.

451 (Signed) _____

452 Subscribed and sworn to (or affirmed) before me by _____ on this _____ day
453 of _____, _____.

454 (Signed) _____

455 (Clerk or Notary Public)"

456 (e) Each person wishing to become a valid write-in candidate for an elective local
457 district board position is governed by Section 20A-9-601.

458 (f) If at least one person does not file a declaration of candidacy as required by this
459 section, a person shall be appointed to fill that board position by following the procedures and
460 requirements for appointment established in Section 20A-1-512.

461 (g) If only one candidate files a declaration of candidacy and there is no write-in

462 candidate who complies with Section 20A-9-601, the board, in accordance with Section
463 20A-1-206, may:

- 464 (i) consider the candidate to be elected to the position; and
- 465 (ii) cancel the election.

466 (5) (a) A primary election may be held if:

- 467 (i) the election is authorized by the local district board; and
- 468 (ii) the number of candidates for a particular local board position or office exceeds
469 twice the number of persons needed to fill that position or office.

470 (b) The primary election shall be conducted:

471 (i) on the same date as the municipal primary election, as provided for in Section
472 20A-1-201.5; and

473 (ii) according to the procedures for municipal primary elections provided under Title
474 20A, Election Code.

475 (6) (a) Except as provided in Subsection (6)(c), the local district clerk shall certify the
476 candidate names to the clerk of each county in which the local district is located no later than
477 July 20 of the municipal election year.

478 (b) (i) Except as provided in Subsection (6)(c) and in accordance with Section
479 20A-6-305, the clerk of each county in which the local district is located shall coordinate the
480 placement of the name of each candidate for local district office in the nonpartisan section of
481 the municipal general election ballot with the municipal election clerk.

482 (ii) If consolidation of the local district election ballot with the municipal general
483 election ballot is not feasible, the county clerk shall provide for a separate local district election
484 ballot to be administered by poll workers at polling locations designated under Subsection (2).

485 (c) (i) Subsections (6)(a) and (b) do not apply to an election of a member of the board
486 of an irrigation district established under Chapter 2a, Part 5, Irrigation District Act.

487 (ii) (A) Subject to Subsection (6)(c)(ii)(B), the board of each irrigation district shall
488 prescribe the form of the ballot for each board member election.

489 (B) Each ballot for an election of an irrigation district board member shall be in a
490 nonpartisan format.

491 (C) The name of each candidate shall be placed on the ballot in the order specified
492 under Section 20A-6-305.

493 (7) (a) Each voter at an election for a board of trustees member of a local district shall:

494 (i) be a registered voter within the district, except for an election of:

495 (A) an irrigation district board of trustees member; or

496 (B) a basic local district board of trustees member who is elected by property owners;

497 and

498 (ii) meet the requirements to vote established by the district.

499 (b) Each voter may vote for as many candidates as there are offices to be filled.

500 (c) The candidates who receive the highest number of votes are elected.

501 (8) Except as otherwise provided by this section, the election of local district board
502 members is governed by Title 20A, Election Code.

503 (9) (a) A person elected to serve on a local district board shall serve a four-year term,
504 beginning at noon on the January 1 after the person's election.

505 (b) A person elected shall be sworn in as soon as practical after January 1.

506 (10) (a) Except as provided in Subsection (10)(b), each local district shall reimburse
507 the county or municipality holding an election under this section for the costs of the election
508 attributable to that local district.

509 (b) Each irrigation district shall bear its own costs of each election it holds under this
510 section.

511 (11) This section does not apply to an improvement district that provides electric or gas
512 service.

513 (12) Except as provided in Subsection 20A-3-605(1)(b), the provisions of Title 20A,
514 Chapter 3, Part 6, Early Voting, do not apply to an election under this section.

515 Section 8. Section **17B-1-307** is amended to read:

516 **17B-1-307. Annual compensation -- Per diem compensation -- Participation in**
517 **group insurance plan -- Reimbursement of expenses.**

518 (1) (a) Except as provided in Subsection 17B-1-308(1)(e), a member of a board of
519 trustees may receive compensation for service on the board, as determined by the board of
520 trustees.

521 (b) The amount of compensation under this Subsection (1) may not exceed \$5,000 per
522 year.

523 (c) (i) As determined by the board of trustees, a member of the board of trustees may

524 participate in a group insurance plan provided to employees of the local district on the same
525 basis as employees of the local district.

526 (ii) The amount that the local district pays to provide a member with coverage under a
527 group insurance plan shall be included as part of the member's compensation for purposes of
528 Subsection (1)(b).

529 (d) The amount that a local district pays employer-matching employment taxes, if a
530 member of the board of trustees is treated as an employee for federal tax purposes, does not
531 constitute compensation under Subsection (1).

532 (2) In addition to the compensation provided under Subsection (1), the board of
533 trustees may elect to allow a member to receive per diem and travel expenses for up to 12
534 meetings or activities per year in accordance with:

535 (a) Section 63A-3-106;

536 (b) Section 63A-3-107; and

537 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
538 63A-3-107.

539 Section 9. Section **17B-1-310** is amended to read:

540 **17B-1-310. Quorum of board of trustees -- Meetings of the board.**

541 (1) (a) (i) Except as provided in Subsection (1)(b), a majority of the board of trustees
542 constitutes a quorum for the transaction of board business, and action by a majority of a
543 quorum constitutes action of the board.

544 (ii) Except as otherwise required by law, an otherwise valid action of the board is not
545 made invalid because of the method chosen by the board to take or memorialize the action.

546 (b) (i) Subject to Subsection (1)(b)(ii), a board may adopt bylaws or other rules that
547 require more than a majority to constitute a quorum or that require action by more than a
548 majority of a quorum to constitute action by the board.

549 ~~(ii) [Except for board action to dispose of real property owned by the local district,~~
550 ~~board] A board with five or more members may not adopt bylaws or rules ~~[may not] that~~
551 ~~require a vote of more than two-thirds [vote] of the board to constitute board action~~ except for
552 a board action to dispose of real property owned by the local district.~~

553 (2) The board of trustees shall hold such regular and special meetings as the board
554 determines at a location that the board determines.

555 (3) (a) Each meeting of the board of trustees shall comply with Title 52, Chapter 4,
556 Open and Public Meetings Act.

557 (b) Subject to Subsection (3)(c), a board of trustees shall:

558 (i) adopt rules of order and procedure to govern a public meeting of the board of
559 trustees;

560 (ii) conduct a public meeting in accordance with the rules of order and procedure
561 described in Subsection (3)(b)(i); and

562 (iii) make the rules of order and procedure described in Subsection (3)(b)(i) available
563 to the public:

564 (A) at each meeting of the board of trustees; and

565 (B) on the local district's public website, if available.

566 (c) Subsection (3)(b) does not affect the board of trustees' duty to comply with Title 52,
567 Chapter 4, Open and Public Meetings Act.

568 Section 10. Section **17B-1-311** is amended to read:

569 **17B-1-311. Board member prohibited from district employment -- Exception.**

570 (1) No elected or appointed member of the board of trustees of a local district may,
571 while serving on the board, be employed by the district, whether as an employee or under a
572 contract.

573 (2) No person employed by a local district, whether as an employee or under a contract,
574 may serve on the board of that local district.

575 (3) A local district is not in violation of a prohibition described in Subsection (1) or (2)
576 if the local district:

577 (a) treats a member of a board of trustees as an employee for income tax purposes; and

578 (b) complies with the compensation limits of Section 17B-1-307 for purposes of that
579 member.

580 [~~3~~] (4) This section does not apply to a local district if:

581 (a) fewer than 3,000 people live within 40 miles of the primary place of employment,
582 measured over all weather public roads; and

583 (b) with respect to the employment of a board of trustees member under Subsection
584 (1):

585 (i) the job opening has had reasonable public notice; and

586 (ii) the person employed is the best qualified candidate for the position.

587 Section 11. Section **17B-1-639** is amended to read:

588 **17B-1-639. Annual financial reports -- Audit reports.**

589 (1) Within 180 days after the close of each fiscal year, the district shall prepare an
590 annual financial report in conformity with generally accepted accounting principles as
591 prescribed in the Uniform Accounting Manual for Local Districts.

592 (2) The requirement under Subsection (1) to prepare an annual financial report may be
593 satisfied by presentation of the audit report furnished by the ~~[independent]~~ auditor.

594 (3) Copies of the annual financial report or the audit report furnished by the
595 ~~[independent]~~ auditor shall be filed with the state auditor and shall be filed as a public
596 document in the district office.

597 Section 12. Section **17B-1-640** is amended to read:

598 **17B-1-640. Audits required.**

599 (1) ~~[Independent audits of all local districts are]~~ An audit of each local district is
600 required to be performed in conformity with Title 51, Chapter 2a, Accounting Reports from
601 Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

602 (2) The board of trustees shall appoint an ~~[independent]~~ auditor for the purpose of
603 complying with the requirements of this section and with Title 51, Chapter 2a, Accounting
604 Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

605 Section 13. Section **17D-1-201** is amended to read:

606 **17D-1-201. Services that a special service district may be created to provide.**

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

609 (1) water;

610 (2) sewerage;

611 (3) drainage;

612 (4) flood control;

613 (5) garbage collection and disposal;

614 (6) health care;

615 (7) transportation, including the receipt of federal secure rural school funds under

616 Section 51-9-603 for the purposes of constructing, improving, repairing, or maintaining public

- 617 roads;
- 618 (8) recreation;
- 619 (9) fire protection, including:
- 620 (a) emergency medical services, ambulance services, and search and rescue services, if
- 621 fire protection service is also provided;
- 622 (b) Firewise Communities programs and the development of community wildfire
- 623 protection plans; and
- 624 (c) the receipt of federal secure rural school funds as provided under Section 51-9-603
- 625 for the purposes of carrying out Firewise Communities programs, developing community
- 626 wildfire protection plans, and performing emergency services, including firefighting on federal
- 627 land and other services authorized under this Subsection (9);
- 628 (10) providing, operating, and maintaining correctional and rehabilitative facilities and
- 629 programs for municipal, state, and other detainees and prisoners;
- 630 (11) street lighting;
- 631 (12) consolidated 911 and emergency dispatch;
- 632 (13) animal shelter and control;
- 633 (14) receiving federal mineral lease funds under Title 59, Chapter 21, Mineral Lease
- 634 Funds, and expending those funds to provide construction and maintenance of public facilities,
- 635 traditional governmental services, and planning, as a means for mitigating impacts from
- 636 extractive mineral industries;
- 637 (15) in a county of the first class, extended police protection; [~~or~~]
- 638 (16) control or abatement of earth movement or a landslide[-]; or
- 639 (17) cemetery.

640 Section 14. Section **20A-1-512** is amended to read:

641 **20A-1-512. Midterm vacancies on local district boards.**

- 642 (1) (a) Whenever a vacancy occurs on any local district board for any reason, a
- 643 replacement to serve out the unexpired term shall be appointed as provided in this section by:
- 644 (i) the local district board, if the person vacating the position was elected; or
- 645 (ii) the appointing authority, as defined in Section 17B-1-102, if the person vacating
- 646 the position was appointed.
- 647 (b) [~~Before~~] Except as provided in Subsection (1)(c), before acting to fill the vacancy,

648 the local district board or appointing authority shall:

649 (i) give public notice of the vacancy at least two weeks before the local district board
650 or appointing authority meets to fill the vacancy; and

651 (ii) identify, in the notice:

652 (A) the date, time, and place of the meeting where the vacancy will be filled; and

653 (B) the person to whom a person interested in being appointed to fill the vacancy may
654 submit his name for consideration and any deadline for submitting it.

655 (c) An appointing authority is not subject to Subsection (1)(b) if the appointing
656 authority appoints one of its own members.

657 (2) If the local district board fails to appoint a person to complete an elected board
658 member's term within 90 days, the legislative body of the county or municipality that created
659 the local district shall fill the vacancy following the procedure set forth for a local district in
660 Subsection (1)(b).

661 Section 15. Section **62A-2-110** is amended to read:

662 **62A-2-110. Exclusions from chapter.**

663 The provisions of this chapter do not apply to:

664 (1) a facility or program owned or operated by an agency of the United States
665 government;

666 (2) a facility or program operated by or under an exclusive contract with the
667 Department of Corrections;

668 (3) unless required otherwise by a contract with the department, individual or group
669 counseling by a mental health professional licensed under Title 58, Chapter 60, Mental Health
670 Professional Practice Act;

671 (4) a general acute hospital, small health care facility, specialty hospital, nursing care
672 facility, or other health care facility licensed by the Department of Health under Title 26,
673 Chapter 21, Health Care Facility Licensing and Inspection Act; [or]

674 (5) a boarding school[-]; or

675 (6) a facility or program operated by or under an exclusive contract with a public
676 transit district described in Title 17B, Chapter 2a, Part 8, Public Transit District Act.

Legislative Review Note
as of 2-14-13 9:44 AM

Office of Legislative Research and General Counsel