

Effective 2/27/2023

**17B-1-510 Resolution approving or rejecting withdrawal -- Criteria for approval or rejection
-- Terms and conditions.**

- (1) (a) No later than 90 days after the public hearing under Section 17B-1-508, or, if no hearing is held, within 90 days after the filing of a petition under Section 17B-1-504, the board of trustees of the special district in which the area proposed to be withdrawn is located shall adopt a resolution:
- (i) approving the withdrawal of some or all of the area from the special district; or
 - (ii) rejecting the withdrawal.
- (b) Each resolution approving a withdrawal shall:
- (i) include a legal description of the area proposed to be withdrawn;
 - (ii) state the effective date of the withdrawal; and
 - (iii) set forth the terms and conditions under Subsection (5), if any, of the withdrawal.
- (c) Each resolution rejecting a withdrawal shall include a detailed explanation of the board of trustees' reasons for the rejection.
- (2) Unless denial of the petition is required under Subsection (3), the board of trustees shall adopt a resolution approving the withdrawal of some or all of the area from the special district if the board of trustees determines that:
- (a) the area to be withdrawn does not and will not require the service that the special district provides;
 - (b) the special district will not be able to provide service to the area to be withdrawn for the reasonably foreseeable future; or
 - (c) the area to be withdrawn has obtained the same service that is provided by the special district or a commitment to provide the same service that is provided by the special district from another source.
- (3) The board of trustees shall adopt a resolution denying the withdrawal if it determines that the proposed withdrawal would:
- (a) result in a breach or default by the special district under:
 - (i) any of its notes, bonds, or other debt or revenue obligations;
 - (ii) any of its agreements with entities which have insured, guaranteed, or otherwise credit-enhanced any debt or revenue obligations of the special district; or
 - (iii) any of its agreements with the United States or any agency of the United States; provided, however, that, if the special district has entered into an agreement with the United States that requires the consent of the United States for a withdrawal of territory from the district, a withdrawal under this part may occur if the written consent of the United States is obtained and filed with the board of trustees;
 - (b) adversely affect the ability of the special district to make any payments or perform any other material obligations under:
 - (i) any of its agreements with the United States or any agency of the United States;
 - (ii) any of its notes, bonds, or other debt or revenue obligations; or
 - (iii) any of its agreements with entities which have insured, guaranteed, or otherwise credit-enhanced any debt or revenue obligations of the special district;
 - (c) result in the reduction or withdrawal of any rating on an outstanding note, bond, or other debt or revenue obligation of the special district;
 - (d) create an island or peninsula of nondistrict territory within the special district or of district territory within nondistrict territory that has a material adverse affect on the special district's

ability to provide service or materially increases the cost of providing service to the remainder of the special district;

- (e) materially impair the operations of the remaining special district; or
- (f) require the special district to materially increase the fees it charges or property taxes or other taxes it levies in order to provide to the remainder of the district the same level and quality of service that was provided before the withdrawal.

(4) In determining whether the withdrawal would have any of the results described in Subsection (3), the board of trustees may consider the cumulative impact that multiple withdrawals over a specified period of time would have on the special district.

- (5)
 - (a) Despite the presence of one or more of the conditions listed in Subsection (3), the board of trustees may approve a resolution withdrawing an area from the special district imposing terms or conditions that mitigate or eliminate the conditions listed in Subsection (3), including:
 - (i) a requirement that the owners of property located within the area proposed to be withdrawn or residents within that area pay their proportionate share of any outstanding district bond or other obligation as determined pursuant to Subsection (5)(b);
 - (ii) a requirement that the owners of property located within the area proposed to be withdrawn or residents within that area make one or more payments in lieu of taxes, fees, or assessments;
 - (iii) a requirement that the board of trustees and the receiving entity agree to reasonable payment and other terms in accordance with Subsections (5)(f) through (g) regarding the transfer to the receiving entity of district assets that the district used before withdrawal to provide service to the withdrawn area but no longer needs because of the withdrawal; provided that, if those district assets are allocated in accordance with Subsections (5)(f) through (g), the district shall immediately transfer to the receiving entity on the effective date of the withdrawal, all title to and possession of district assets allocated to the receiving entity; or
 - (iv) any other reasonable requirement considered to be necessary by the board of trustees.
 - (b) Other than as provided for in Subsection 17B-1-511(2), and except as provided in Subsection (5)(e), in determining the proportionate share of outstanding bonded indebtedness or other obligations under Subsection (5)(a)(i) and for purposes of determining the allocation and transfer of district assets under Subsection (5)(a)(iii), the board of trustees and the receiving entity, or in cases where there is no receiving entity, the board and the sponsors of the petition shall:
 - (i) engage engineering and accounting consultants chosen by the procedure provided in Subsection (5)(d); provided however, that if the withdrawn area is not receiving service, an engineering consultant need not be engaged; and
 - (ii) require the engineering and accounting consultants engaged under Subsection (5)(b)(i) to communicate in writing to the board of trustees and the receiving entity, or in cases where there is no receiving entity, the board and the sponsors of the petition the information required by Subsections (5)(f) through (h).

(c) For purposes of this Subsection (5):

- (i) "accounting consultant" means a certified public accountant or a firm of certified public accountants with the expertise necessary to make the determinations required under Subsection (5)(h); and
- (ii) "engineering consultant" means a person or firm that has the expertise in the engineering aspects of the type of system by which the withdrawn area is receiving service that is necessary to make the determination required under Subsections (5)(f) and (g).

(d)

- (i) Unless the board of trustees and the receiving entity, or in cases where there is no receiving entity, the board and the sponsors of the petition agree on an engineering consultant and an accounting consultant, each consultant shall be chosen from a list of consultants provided by the Consulting Engineers Council of Utah and the Utah Association of Certified Public Accountants, respectively, as provided in this Subsection (5)(d).
 - (ii) A list under Subsection (5)(d)(i) may not include a consultant who has had a contract for services with the district or the receiving entity during the two-year period immediately before the list is provided to the special district.
 - (iii) Within 20 days of receiving the lists described in Subsection (5)(d)(i), the board of trustees shall eliminate the name of one engineering consultant from the list of engineering consultants and the name of one accounting consultant from the list of accounting consultants and shall notify the receiving entity, or in cases where there is no receiving entity, the sponsors of the petition in writing of the eliminations.
 - (iv) Within three days of receiving notification under Subsection (5)(d), the receiving entity, or in cases where there is no receiving entity, the sponsors of the petition shall eliminate another name of an engineering consultant from the list of engineering consultants and another name of an accounting consultant from the list of accounting consultants and shall notify the board of trustees in writing of the eliminations.
 - (v) The board of trustees and the receiving entity, or in cases where there is no receiving entity, the board and the sponsors of the petition shall continue to alternate between them, each eliminating the name of one engineering consultant from the list of engineering consultants and the name of one accounting consultant from the list of accounting consultants and providing written notification of the eliminations within three days of receiving notification of the previous notification, until the name of only one engineering consultant remains on the list of engineering consultants and the name of only one accounting consultant remains on the list of accounting consultants.
- (e) The requirement under Subsection (5)(b) to engage engineering and accounting consultants does not apply if the board of trustees and the receiving entity, or in cases where there is no receiving entity, the board and the sponsors of the petition agree on the allocations that are the engineering consultant's responsibility under Subsection (5)(f) or the determinations that are the accounting consultant's responsibility under Subsection (5)(h); provided however, that if engineering and accounting consultants are engaged, the district and the receiving entity, or in cases where there is no receiving entity, the district and the sponsors of the petition shall equally share the cost of the engineering and accounting consultants.

(f)

- (i) The engineering consultant shall allocate the district assets between the district and the receiving entity as provided in this Subsection (5)(f).
- (ii) The engineering consultant shall allocate:
 - (A) to the district those assets reasonably needed by the district to provide to the area of the district remaining after withdrawal the kind, level, and quality of service that was provided before withdrawal; and
 - (B) to the receiving entity those assets reasonably needed by the receiving entity to provide to the withdrawn area the kind and quality of service that was provided before withdrawal.
- (iii) If the engineering consultant determines that both the special district and the receiving entity reasonably need a district asset to provide to their respective areas the kind and quality of service provided before withdrawal, the engineering consultant shall:

- (A) allocate the asset between the special district and the receiving entity according to their relative needs, if the asset is reasonably susceptible of division; or
 - (B) allocate the asset to the special district, if the asset is not reasonably susceptible of division.
- (g) All district assets remaining after application of Subsection (5)(f) shall be allocated to the special district.
- (h)
- (i) The accounting consultant shall determine the withdrawn area's proportionate share of any redemption premium and the principal of and interest on:
 - (A) the special district's revenue bonds that were outstanding at the time the petition was filed;
 - (B) the special district's general obligation bonds that were outstanding at the time the petition was filed; and
 - (C) the special district's general obligation bonds that:
 - (I) were outstanding at the time the petition was filed; and
 - (II) are treated as revenue bonds under Subsection (5)(i); and
 - (D) the district's bonds that were issued prior to the date the petition was filed to refund the district's revenue bonds, general obligation bonds, or general obligation bonds treated as revenue bonds.
 - (ii) For purposes of Subsection (5)(h)(i), the withdrawn area's proportionate share of redemption premium, principal, and interest shall be the amount that bears the same relationship to the total redemption premium, principal, and interest for the entire district that the average annual gross revenues from the withdrawn area during the three most recent complete fiscal years before the filing of the petition bears to the average annual gross revenues from the entire district for the same period.
 - (i) For purposes of Subsection (5)(h)(i), a district general obligation bond shall be treated as a revenue bond if:
 - (i) the bond is outstanding on the date the petition was filed; and
 - (ii) the principal of and interest on the bond, as of the date the petition was filed, had been paid entirely from special district revenues and not from a levy of ad valorem tax.
 - (j)
 - (i) Before the board of trustees of the special district files a resolution approving a withdrawal, the receiving entity, or in cases where there is no receiving entity, the sponsors of the petition shall irrevocably deposit government obligations, as defined in Subsection 11-27-2(6), into an escrow trust fund the principal of and interest on which are sufficient to provide for the timely payment of the amount determined by the accounting consultant under Subsection (5)(h) or in an amount mutually agreeable to the board of trustees of the special district and the receiving entity, or in cases where there is no receiving entity, the board and the sponsors of the petition. Notwithstanding Subsection 17B-1-512(1), the board of trustees may not be required to file a resolution approving a withdrawal until the requirements for establishing and funding an escrow trust fund in this Subsection (5)(j)(i) have been met; provided that, if the escrow trust fund has not been established and funded within 180 days after the board of trustees passes a resolution approving a withdrawal, the resolution approving the withdrawal shall be void.
 - (ii) Concurrently with the creation of the escrow, the receiving entity, or in cases where there is no receiving entity, the sponsors of the petition shall provide to the board of trustees of the special district:
 - (A) a written opinion of an attorney experienced in the tax-exempt status of municipal bonds stating that the establishment and use of the escrow to pay the proportionate share of

- the district's outstanding revenue bonds and general obligation bonds that are treated as revenue bonds will not adversely affect the tax-exempt status of the bonds; and
- (B) a written opinion of an independent certified public accountant verifying that the principal of and interest on the deposited government obligations are sufficient to provide for the payment of the withdrawn area's proportionate share of the bonds as provided in Subsection (5)(h).
- (iii) The receiving entity, or in cases where there is no receiving entity, the sponsors of the petition shall bear all expenses of the escrow and the redemption of the bonds.
- (iv) The receiving entity may issue bonds under Title 11, Chapter 14, Local Government Bonding Act, and Title 11, Chapter 27, Utah Refunding Bond Act, to fund the escrow.
- (6) A requirement imposed by the board of trustees as a condition to withdrawal under Subsection (5) shall, in addition to being expressed in the resolution, be reduced to a duly authorized and executed written agreement between the parties to the withdrawal.
- (7) An area that is the subject of a withdrawal petition under Section 17B-1-504 that results in a board of trustees resolution denying the proposed withdrawal may not be the subject of another withdrawal petition under Section 17B-1-504 for two years after the date of the board of trustees resolution denying the withdrawal.

Amended by Chapter 15, 2023 General Session