

**AMENDMENTS TO COUNTY IMPROVEMENT
DISTRICTS FOR WATER SERVICES**

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Brian R. Allen

AN ACT RELATING TO SPECIAL DISTRICTS; RESTRICTING THE AREA THAT CAN BE INCLUDED IN A COUNTY IMPROVEMENT DISTRICT FOR WATER SERVICES UNDER CERTAIN CIRCUMSTANCES; ESTABLISHING A PROCEDURE FOR WITHDRAWING TERRITORY WITHIN A MUNICIPALITY FROM A COUNTY IMPROVEMENT DISTRICT FOR WATER SERVICES; PROVIDING FOR AN ALLOCATION OF DISTRICT ASSETS UPON WITHDRAWAL; PROVIDING A METHOD FOR WITHDRAWN AREA TO PAY ITS PROPORTIONATE SHARE OF DISTRICT BONDS; ALLOWING MUNICIPALITY TO ISSUE BONDS TO FUND AN ESCROW TO PAY PROPORTIONATE SHARE OF CERTAIN BONDS; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

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

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

ENACTS:

17A-2-340, Utah Code Annotated 1953

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

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

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

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

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

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

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

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

~~[(ii)]~~ (B) to be used to facilitate gas utility service within the district if such gas utility service is not available within the district prior to the acquisition or construction of such systems. Such new gas utility service shall be provided by a gas corporation regulated under Section 54-4-1 and not by the district.

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

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

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

(d) (i) Notwithstanding Subsection (2)(a), an improvement district created under this part after May 4, 1998, for the supply, treatment, or distribution of water may not include part of a municipality unless:

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

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

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

(3) ~~[Where any]~~ If an improvement district is created under this part solely for the purpose of acquiring a system for the collection, retention, or disposition of storm and flood waters, the county legislative body creating the district may, in its discretion and despite anything to the contrary in Section 17A-2-305, act as the board of trustees of the district for so long as it considers desirable.

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

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

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

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

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

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

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

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

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

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

(b) to be published for a period of ten days in a newspaper of general circulation in the

improvement district.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) except as provided in Subsection (2)(c)(ii)(B), owners representing a majority ownership interest in that parcel; or

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

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

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

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

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

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

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

(I) certify the petition;

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

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

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

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

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

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

(A) in writing;

(B) signed by the person who signed the petition; and

(C) delivered, within 40 days after certification of the petition under Subsection (3)(a)(ii)(A), to the clerk or recorder of the municipality in which the area proposed to be withdrawn is located.

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

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

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

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

(i) perform a study to determine the benefits and feasibility of connecting the proposed withdrawn area to the municipality's water system;

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

(iii) give reasonable notice, as provided in Subsection 10-9-103(2)(a), of the hearing at least

14 days before the hearing.

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

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

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

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

(c) If the voters reject the withdrawal at an election under Subsection (5)(a), no petition may be filed proposing withdrawal of the same area until five years after the election.

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

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

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

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

(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 (7)(b); and

(ii) "Engineering consultant" means a person or firm that has the expertise in the engineering

aspects of a system for the supply, treatment, and distribution of water that is necessary to make the determination required under Subsection (7)(a).

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

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

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

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

(iii) Within 20 days of receiving the lists described in Subsection (6)(c)(i), the governing body of the improvement district 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 municipal legislative body in writing of the eliminations.

(iv) Within three days of receiving notification under Subsection (6)(c)(iii), the municipal legislative body 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 governing body of the improvement district in writing of the eliminations.

(v) The governing body of the improvement district and the municipal legislative body 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 notifications, 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.

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

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

(ii) The engineering consultant shall allocate:

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

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

(iii) If the engineering consultant determines that both the improvement district and the municipality reasonably need an improvement 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 improvement district and municipality according to their relative needs, if the asset is reasonably susceptible of division; or

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

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

(b) (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 improvement district's revenue bonds that were outstanding at the time the petition

was filed; and

(B) the improvement 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 (10)(b).

(ii) For purposes of Subsection (7)(b)(i), the withdrawn area's proportionate share shall be the amount that bears the same relationship to the total for the entire improvement 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 bear to the average annual gross revenues from the entire improvement district for the same period.

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

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

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

(ii) Each resolution under Subsection (8)(a)(i) approving a withdrawal shall include a map or plat that accurately delineates by metes and bounds the withdrawn area.

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

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

(9) (a) Except as provided in Subsection (9)(b), the improvement district and the municipality shall equally share the cost of the engineering and accounting consultants and the

expenses of an election under Subsection (5).

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

(10) (a) (i) Before recording the resolution under Subsection (11)(a)(i), the municipality 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 (7)(b)(i).

(ii) Concurrently with the creation of the escrow, the municipality shall provide to the improvement 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 improvement 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 government obligations are sufficient to provide for the payment of the withdrawn area's proportionate share of the bonds as provided in Subsection (7)(b)(i).

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

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

(b) For purposes of Subsection (7)(b)(i), an improvement 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 improvement district revenues and not from a levy of ad valorem tax.

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

(i) for the purpose of paying the withdrawn area's just proportion of the improvement

district's general obligation bonds, other than those bonds treated as revenue bonds under Subsection (10)(b), outstanding at the time the petition was filed until the bonded indebtedness has been satisfied; and

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

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

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

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

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

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

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

(b) Upon the recording of the resolution in the county recorder's office under Subsection (11)(a)(i) and notification to the State Tax Commission under Subsection (11)(a)(ii), the withdrawal shall be complete, and the withdrawn area shall cease to be part of the improvement district.

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

(7)(a).

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

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

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

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