

1 **AMENDMENTS TO COUNTY IMPROVEMENT**

2 **DISTRICTS FOR WATER SERVICES**

3 1998 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Brian R. Allen**

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

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

13 AMENDS:

14 **17A-2-301**, as last amended by Chapters 173, 316 and 342, Laws of Utah 1995

15 **17A-2-334**, as renumbered and amended by Chapter 186, Laws of Utah 1990

16 ENACTS:

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

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

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

20 **17A-2-301. Establishment -- Authority -- Area.**

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

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

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

26 [(a)] (i) systems for the supply, treatment, and distribution of water;

27 [(b)] (ii) systems for the collection, treatment, and disposition of sewage;

1 ~~[(c)]~~ (iii) systems for the collection, retention, and disposition of storm and flood waters;
2 ~~[(d)]~~ (iv) systems for the generation, distribution, and sale of electricity; and
3 ~~[(e)]~~ (v) systems for the transmission of natural or manufactured gas that are:

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

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

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

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

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

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

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

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

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

27 (ii) For purposes of Subsection (2)(d)(i)(B), the provisions of Subsections
28 17A-2-340(2)(c)(i), (ii), (iii), and (iv) apply.

29 (3) ~~[Where any]~~ If an improvement district is created under this part solely for the purpose
30 of acquiring a system for the collection, retention, or disposition of storm and flood waters, the
31 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

1 **the supply, treatment, or distribution of water.**

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

5 (b) This section applies only if, at the time of the creation of the improvement district
6 whose boundaries include all or part of the municipality, the municipality had been operating
7 within the municipality a system for the supply, treatment, or distribution of water.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (3) (a) Within 45 days of the filing of a petition under Subsection (2)(a), the municipal
10 clerk or recorder shall:

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

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

16 (I) certify the petition;

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

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

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

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

26 (c) (i) Subject to Subsection (3)(c)(ii), a signer of a petition under Subsection (2)(a) may
27 withdraw the signer's signature from the petition or, after it is withdrawn, reinstate it.

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

30 (A) in writing;

31 (B) signed by the person who signed the petition under Subsection (2)(a); and

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

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

6 (b) (i) Subject to Subsection (4)(b)(ii), each resolution under Subsection (4)(a) shall be
7 adopted no less than 45 and no more than 120 days after a petition filed under Subsection (2)(a)
8 is certified under Subsection (3)(a)(ii)(A).

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

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

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

15 (ii) give reasonable notice, as provided in Subsection 10-9-103(2)(a), of the hearing at least
16 14 days before the hearing.

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

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

24 (b) Each election under Subsection (5)(a) shall be held by the municipality in which the
25 area proposed to be withdrawn is located.

26 (c) If the voters reject the withdrawal at an election under Subsection (5)(a), no petition
27 may be filed under Subsection (2)(a) proposing withdrawal of the same area until five years after
28 the election.

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

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

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

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

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

11 (ii) "Engineering consultant" means a person or firm with expertise in the engineering
12 aspects of a system for the supply, treatment, and distribution of water.

13 (c) (i) The engineering consultant shall be chosen from a list of six engineering consultants
14 provided by the Consulting Engineers Council of Utah, and the accounting consultant shall be
15 chosen from a list of six accounting consultants provided by the Utah Association of Certified
16 Public Accountants.

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

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

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

30 (v) The governing body of the improvement district and the municipal legislative body
31 shall continue to alternate between them, each eliminating the name of one engineering consultant

1 from the list of engineering consultants and the name of one accounting consultant from the list
2 of accounting consultants and providing written notification of the eliminations within three days
3 of receiving notification of the previous notifications, until the name of only one engineering
4 consultant remains on the list of engineering consultants and the name of only one accounting
5 consultant remains on the list of accounting consultants.

6 (7) (a) (i) Subject to Subsections (7)(a)(ii) and (iii), the engineering consultant shall
7 allocate the improvement district assets between the improvement district and the municipality.

8 (ii) The engineer shall allocate:

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

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

14 (iii) If the engineer determines that both the improvement district and the municipality
15 reasonably need an improvement district asset to provide to their respective areas the kind and
16 quality of service provided before withdrawal, the engineer shall:

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

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

21 (b) (i) The accounting consultant shall determine:

22 (A) subject to Subsection (7)(b)(ii), the proposed withdrawn area's proportionate share of
23 the improvement district's outstanding revenue and general obligation bonds; and

24 (B) subject to Subsection (7)(b)(iii), fair and reasonable terms and conditions pursuant to
25 which the municipality shall pay the amounts determined under Subsection (7)(b)(i)(A).

26 (ii) For purposes of Subsection (7)(b)(i)(A):

27 (A) the proposed withdrawn area's proportionate share of revenue bonds shall be
28 determined by dividing the number of water connections on the property within the withdrawn area
29 immediately before withdrawal by the number of water connections on all property within the
30 improvement district immediately before withdrawal; and

31 (B) the proposed withdrawn area's proportionate share of general obligation bonds shall

1 be determined by dividing the assessed value of taxable property within the withdrawn area
2 immediately before withdrawal by the assessed value of all taxable property within the
3 improvement district immediately before withdrawal.

4 (iii) The amount to be paid by the municipality to the improvement district and the timing
5 of those payments, as determined by the accounting consultant under Subsection (7)(b)(i)(B), shall
6 be sufficient to pay the withdrawn area's proportionate share of the total amount needed to prevent
7 a default in the payment of principal and interest on improvement district revenue and general
8 obligation bonds outstanding at the time of withdrawal.

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

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

16 (d) (i) Except as provided in Subsection (7)(d)(ii), the improvement district and the
17 municipality shall equally share the cost of the engineering and accounting consultants.

18 (ii) Notwithstanding Subsection (7)(d)(i), the municipality shall pay the full cost of the
19 engineering and accounting consultants if the municipal legislative body rejects the withdrawal
20 under Subsection (8)(a).

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

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

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

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

31 (c) Each municipal legislative body adopting a resolution under Subsection (8)(a)

1 approving the withdrawal shall:

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

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

7 (d) Upon the recording of the resolution in the county recorder's office under Subsection
8 (8)(c)(i) and notification to the State Tax Commission under Subsection (8)(c)(ii), the withdrawal
9 shall be complete, and the withdrawn area shall cease to be part of the improvement district.

10 (9) After withdrawal, the municipality shall pay the amounts determined by the
11 engineering and accounting consultants under Subsections (7)(a) and (b)(i)(A) according to the
12 terms and conditions established under Subsections (7)(b)(i)(B) and (C).

13 (10) (a) An improvement district or a municipality may seek judicial review of a decision
14 of the engineering consultant or the accounting consultant:

15 (i) if the municipal legislative body adopts a resolution under Subsection (8)(a)(i)
16 approving the withdrawal; and

17 (ii) by filing, within 30 days of the municipal legislative body's adoption of a resolution
18 under Subsection (8)(a)(i), an action in the district court in which the proposed withdrawn area is
19 located.

20 (b) In an action under Subsection (10)(a), the court shall uphold the decision of the
21 engineering consultant and the accounting consultant unless the court determines that the decision
22 is arbitrary, capricious, or illegal.

Legislative Review Note

as of 11-25-97 12:39 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Political Subdivisions Interim Committee recommended this bill.