

1 **BONDING AUTHORITY FOR IRRIGATION**
2 **DISTRICTS**

3 2002 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: David L. Gladwell**

6 **This act modifies the Special Districts Code by amending provisions related to irrigation**
7 **districts. The act provides for definitions. The act repeals existing provisions relating to**
8 **bonding authority of irrigation districts and enacts new bonding provisions. The act repeals**
9 **outdated provisions relating to irrigation districts. The act provides for the assessment of**
10 **use charges in place of annual assessments or taxes. The act provides for the collection of**
11 **delinquent use charges. The act makes other changes to the irrigation district provisions.**

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

13 AMENDS:

- 14 **17A-2-711**, as last amended by Chapter 254, Laws of Utah 2000
- 15 **17A-2-712**, as last amended by Chapter 9, Laws of Utah 2001
- 16 **17A-2-718**, as last amended by Chapter 254, Laws of Utah 2000
- 17 **17A-2-721**, as last amended by Chapter 254, Laws of Utah 2000
- 18 **17A-2-722**, as renumbered and amended by Chapter 186, Laws of Utah 1990
- 19 **17A-2-723**, as last amended by Chapters 86 and 254, Laws of Utah 2000
- 20 **17A-2-724**, as last amended by Chapter 254, Laws of Utah 2000
- 21 **17A-2-726**, as last amended by Chapter 254, Laws of Utah 2000
- 22 **17A-2-754**, as last amended by Chapter 90, Laws of Utah 2001
- 23 **17A-2-755**, as renumbered and amended by Chapter 186, Laws of Utah 1990
- 24 **17A-2-756**, as last amended by Chapter 254, Laws of Utah 2000
- 25 **17A-2-761**, as last amended by Chapter 254, Laws of Utah 2000

26 ENACTS:

- 27 **17A-2-701.1**, Utah Code Annotated 1953



59 by an irrigation district, including use charges and other fees, rates, charges, or assessments.

60 (4) "Use charges" means all charges relating to the use, provision, or availability of water,
61 electricity, or other irrigation district services, including, without limiting the generality of the
62 foregoing, all direct or indirect charges, tolls, assessments, impact fees, connection fees, and
63 reserve or availability charges.

64 (5) "Water facilities" means facilities or interests in facilities for irrigation purposes,
65 including reservoir sites, reservoirs, water, water filings, water rights, rights-of-way, water works,
66 sources of water supply, canals, ditches, wells, pipelines, lands, stock of irrigation, canal, or
67 reservoir companies, and all other related structures, works, property, and property interests.

68 Section 3. Section 17A-2-701.5 is enacted to read:

69 **17A-2-701.5. Creation of irrigation districts.**

70 (1) The requirements and procedures for creating an irrigation district are governed by the
71 provisions of Title 17B, Chapter 2, Part 2, Creation of Local Districts.

72 (2) Notwithstanding anything to the contrary in the provisions of Subsection (1):

73 (a) An owner of land located within a proposed district may, prior to the date on which the
74 legislative body adopts a resolution pursuant to Subsection (2)(b), request the county legislative
75 body to include the land in or exclude the land from the proposed irrigation district.

76 (b) Within 60 days after the last hearing required under Section 17B-2-210, the legislative
77 body of each county in which lands of the proposed district are located shall adopt a resolution
78 listing, by acreage and ownership, the lands in that county to be included in the proposed district.

79 The lands need not be contiguous. The list of lands to be included will be based upon:

80 (i) the boundaries set forth in the map accompanying the petition or resolution to create
81 the local district filed pursuant to Section 17B-2-203;

82 (ii) requests for the exclusion of lands from the proposed district; and

83 (iii) requests for the inclusion of lands in the proposed district.

84 (c) In determining whether to deny requests for inclusion or exclusion, and in listing the
85 lands to be included in the proposed district, the county legislative body may not alter the included
86 lands, shown by the map accompanying the petition or resolution filed pursuant to Section
87 17B-2-210, in a manner which changes the objects of the petition or exempts from the operation
88 of this part any lands, requiring water, shown on the map included with the petition, and
89 susceptible of irrigation by the same system of waterworks applicable to other lands in the

90 proposed district. Nor may any land which will not, in the judgment of the county legislative body,
91 be benefitted by the proposed system be included in the district.

92 (d) At the time of creation of the district, the lands included in the district will consist of
93 the lands listed in the resolution adopted pursuant to Subsection (2)(b).

94 Section 4. Section **17A-2-711** is amended to read:

95 **17A-2-711. Board of trustees -- Organization -- Powers and duties -- Other**
96 **provisions applicable.**

97 (1) The board shall establish boundaries of election precincts and may change them, but
98 no change may be made less than 30 days prior to an election. Upon the completion of the
99 organization of the district [~~and before~~], the board of trustees may request the state engineer to
100 conduct a water survey and allotment. Thereupon it will be the duty of the state engineer to cause
101 to be made a water survey of all lands within the district for the purpose of determining and
102 allotting the maximum amounts of water which could be beneficially used on such land; each
103 40-acre tract or smaller tracts in separate ownership within each such legal subdivision shall be
104 separately surveyed and the allotment made therefor. On completion of said survey and allotment,
105 the state engineer shall file with the county legislative body with which the petition for the creation
106 of the district was filed, his return of survey and report of allotment. Before any bond issue or
107 contract is voted on, any assessment levied, or toll or use charge imposed, the board of trustees,
108 having first determined the amount of water available for the use of the district, shall upon notice
109 and a hearing and under rules determined by the board, make a final revision and allotment of the
110 available water to each 40-acre tract or smaller tract in separate ownership within each legal
111 subdivision; but no allotment may be increased above the amount originally allotted by the state
112 engineer without the consent of the state engineer and the final allotment may not be decreased as
113 long as there may be any outstanding indebtedness in excess of .4% of the fair market value of the
114 lands within the district. The allotment may, however, be increased to an amount not exceeding
115 the amount allotted by the state engineer if the additional amount of water becomes available for
116 the use of the district. The final allotment in acre-feet may be the basis of the vote at all elections
117 subsequent to the creation of the district. The final allotment in acre-feet, or other units of
118 measurement, the service, turnout, construction, distribution charges, or other charges, if any,
119 [shall be the basis for all assessments, tolls, and charges levied against the land and shall also
120 subsequently be the basis of the vote at all elections] may be the basis for any use charges. A copy

121 of the order making the allotment or any increase provided, certified to by the secretary of the
122 district, shall be immediately filed for record in the office of the county clerk of the county in
123 which the office of the district is located and a certified copy filed with the county recorder of each
124 county in which any lands of the district are situated. Nothing in this part may prohibit the state
125 engineer, upon petition by the board of trustees after the organization of the district has been
126 perfected, from increasing the maximum allotment of water for any tract or tracts of land embraced
127 within the district when in the opinion of the state engineer the tract or tracts of land cannot be
128 beneficially irrigated with the amount of water allotted. The board of trustees may construct
129 facilities or may acquire facilities by contract, purchase, or condemnation~~[, or otherwise, canals,~~
130 ~~ditches, reservoirs, reservoir sites, irrigation systems or works and lands necessary or incidental~~
131 ~~to the use and operation of irrigation works, and reservoir sites, which]~~ pursuant to Title 78,
132 Chapter 34, Eminent Domain, or otherwise. District lands may be leased when leasing will not
133 interfere with their use for irrigation purposes~~[, and also water filings, water rights, rights-of-way,~~
134 ~~or other property or any interest in the property, including power plants when acquired or~~
135 ~~developed in connection with an irrigation system with the right to sell or dispose of the surplus~~
136 ~~power].~~ The board may also purchase stock of irrigation canal, and reservoir companies. The
137 board may exchange bonds of the district for any such property upon terms and conditions the
138 board considers best, subject to the approval of the State Board of Certification. The board, its
139 agents, and employees may enter upon any land in the district to make surveys and to locate and
140 construct any canal or canals, and the necessary laterals. The board may, by condemnation,
141 acquire rights of way for the enlargement of any ditches, canals, or reservoirs, but the board may
142 not occupy the premises proposed to be condemned pending the determination of a suit, except
143 upon filing the bond required by law in the case of suits by other corporations and individuals. The
144 right-of-way is given, dedicated, and set apart, to locate, construct, and maintain the works, or
145 reservoirs, over, through, or upon any of the lands which are now, or may be the property of the
146 state. The board may make these investigations and based on them, make representations and
147 assurances to the Secretary of the Interior, as may be requisite under the act of Congress, approved
148 August 11, 1916, or other applicable law, and may enter into any obligation or contract with the
149 United States for the construction or operation and maintenance of the necessary works for the
150 delivery and distribution of water or for the assumption, as principal or guarantor of indebtedness
151 to the United States on account of district lands, or for the temporary rental of water under the

152 provisions of the Federal Reclamation Act, and all acts amendatory of that act, or supplementary
153 to it, or any other Acts of Congress now enacted or which may be enacted, and the rules and
154 regulations established under them; or the board may contract with the United States for a water
155 supply under any act of Congress providing for or permitting the contract, and may convey to the
156 United States as partial or full consideration water rights or other property of the district, and in
157 case the contract has been or may be made with the United States as provided in this section,
158 ~~[bonds of the district may be deposited with the United States at 95% of their par value to the~~
159 ~~amount to be paid by the district to the United States under the contract, the interest on the bonds~~
160 ~~to be provided for by assessment and levy as in the case of other bonds of the district, and regularly~~
161 ~~paid to the United States to be applied as provided in the contract, and if bonds of the district are~~
162 ~~not so deposited,]~~ the board of trustees shall include as part of any ~~[levy or assessment]~~ use charges
163 now provided for by law, an amount sufficient to meet each year all payments accruing under the
164 terms of the contract and the board may accept on behalf of the district, appointment of the district
165 as fiscal agent of the United States, or authorization of the district by the United States, or
166 authorization of the district by the United States to make collections of moneys for or on behalf
167 of the United States in connection with any federal reclamation project, at which time the district
168 shall be authorized so as to act and to assume the duties and liabilities incident to that action, and
169 the board may do any and all things required by the federal statutes enacted in connection with it,
170 and all things required by the rules and regulations established by any department of the federal
171 government. Districts cooperating with the United States may rent or lease water to private lands,
172 entrymen, or municipalities in the neighborhood of the district, in pursuance of a contract with the
173 United States. ~~[If a contract is proposed to be made with the United States and bonds are not to~~
174 ~~be deposited with the United States in connection with the contract, the question to be submitted~~
175 ~~to the voters at a special election is whether or not the contract shall be entered into with the~~
176 ~~United States. The notice of election shall state under the terms of what Act or Acts of Congress~~
177 ~~the contract is proposed to be made, and the maximum amount of money payable to the United~~
178 ~~States for construction purposes exclusive of penalties and interest and the water rights and other~~
179 ~~property, if any, to be conveyed to the United States as provided in this section. The ballots for~~
180 ~~the election shall contain the words "Contract with the United States-Yes" and "Contract with the~~
181 ~~United States-No," or the equivalent. If a majority of the votes cast at the election are "Contract~~
182 ~~with the United States-Yes," the board of trustees shall immediately enter into the contract with~~

183 ~~the United States.]~~ The board shall establish equitable rules for the distribution and use of water
184 among the owners of lands included in this district, and may provide that no water may be
185 delivered to lands which are delinquent or in default in the payment of any ~~[toll, charge, tax, or~~
186 ~~assessment]~~ amount due to the district. The rules shall, as soon as adopted, be printed in
187 convenient form for distribution in the district; but water, the right to the use of which is acquired
188 by the district under any contract with the United States, shall be distributed and apportioned by
189 the district in accordance with the Acts of Congress, the rules and regulations, and the provisions
190 of the contract.

191 (2) The board of trustees may annually instruct the county assessor of the county in which
192 the lands to be affected are located to remove from the ~~[assessment]~~ assessor's roll any land
193 publicly dedicated to streets, highways, and roads, and also other land the use of which has so
194 permanently changed as to prevent the beneficial use of water, and the assessor shall do so. The
195 instructions to the assessor shall be accompanied by a written consent to the removal from the
196 ~~[assessment]~~ assessor's roll signed by all owners of private land affected by it.

197 (3) When any tract of land in the district which has no water allotment becomes
198 susceptible to irrigation and use of water, or when any tract has an insufficient water allotment, the
199 board of trustees, upon written application of the owner of the land, may temporarily permit water
200 to be applied on the land, and in that case the board may ~~[annually instruct the county assessor of~~
201 ~~the county in which the tract to be affected is located to assess the tract for water in the amount~~
202 ~~fixed by the board, and the assessor shall do so]~~ impose use charges upon that owner. Nothing
203 contained in this section may affect the permanent water allotments in the district.

204 (4) The board of trustees may lease or rent the use of water not needed by the landowners
205 of the district and in addition may contract to supply and deliver the water to municipalities,
206 corporations, associations, or individuals, within or without the district for irrigation or any other
207 beneficial use, at prices and terms the board considers best. No lease or rental agreement running
208 for a period of more than five years may be made, and no vested or prescriptive right to the use of
209 the water may attach to the land by virtue of the lease or rental; and any landowner in the district
210 may, where practicable, with the consent of the board of trustees, assign the right to the whole or
211 any portion of the water apportioned to the landowner's land for any one year to any other bona
212 fide landowner, for use in the district for the year; if the landowners have paid all ~~[amounts due~~
213 ~~on assessments upon the lands]~~ use charges due. The board shall, at the end of each fiscal year,

214 prepare and submit to a public meeting of the landowners within the district, called for that
 215 purpose, a report covering all transactions and operations of the district during the year.

216 (5) (a) The provisions of Title 17B, Chapter 2, Part 4, Board of Trustees, apply to each
 217 irrigation district to the same extent as if the irrigation district were a local district under Title 17B,
 218 Chapter 2, Local Districts.

219 ~~[(b) (i) If a change in the number of board of trustees members is necessary to comply with~~
 220 ~~the requirements of Subsection 17B-2-402(1), the board of trustees may by majority vote,~~
 221 ~~notwithstanding Subsection 17B-2-402(3), change the number of board members to the next odd~~
 222 ~~number higher or lower than the number of current board members.]~~

223 ~~[(ii) If a change under Subsection (5)(b)(i) decreases the number of board members, the~~
 224 ~~change may not take effect until the expiration of the term of the member whose term next~~
 225 ~~expires.]~~

226 ~~[(iii) If a change in the number of board members necessitated by Subsection 17B-2-402(1)~~
 227 ~~would cause the district to violate a provision of bonds issued by the district, the number of board~~
 228 ~~members may be modified to the extent necessary to avoid a violation.]~~

229 ~~[(c)]~~ (b) (i) If a change in the expiration date of the term of a board of trustees member is
 230 necessary to comply with the requirements of Subsection 17B-2-403(1), the term of each board
 231 member whose term expires on a day other than the first Monday in January shall be extended to
 232 the first Monday in January after the normal expiration date next following the special district
 233 election date under Section 17A-1-305.

234 (ii) If a change in the length of the term of a board of trustees member is necessary to
 235 comply with the requirements of Subsection 17B-2-403(2), the change may not take effect until
 236 the expiration of the term of the member whose term length is to be changed.

237 Section 5. Section **17A-2-712** is amended to read:

238 **17A-2-712. Additional powers of board.**

239 (1) ~~[In addition to any of the powers granted in this part, the board of trustees of any~~
 240 ~~irrigation district] Irrigation districts may acquire, purchase, construct, improve, enlarge, and~~
 241 ~~operate[, or contract for the construction, improvement, enlargement, and operation of:] water~~
 242 ~~facilities, electric facilities, or any combination thereof.~~

243 ~~[(a) reservoir sites, reservoirs, water, water filings, water rights, canals, ditches, and all~~
 244 ~~other related structures and works necessary or proper for the storage and conveyance of water for~~

245 irrigation purposes and all other structures and facilities necessary or proper for the purposes of
246 the irrigation district; and]

247 [~~(b) facilities for the generation of hydroelectric power and all other related structures and~~
248 ~~works necessary or proper for the generation of electricity, including hydroelectric power plants;~~
249 ~~turbine generators, penstocks, transformers, electrical equipment, and other facilities related to~~
250 ~~hydroelectric production plants, not including transmission facilities related to hydroelectric~~
251 ~~production plants.]~~

252 (2) [~~In addition to any of the powers granted in this part, the board of trustees of any~~
253 ~~irrigation district]~~ Irrigation districts may enter into contracts for the sale of all or a portion of the
254 electric power generated at a hydroelectric power plant, whether or not the electric power to be
255 sold is surplus to the needs of the district, and may enter into contracts for the sale of water, for
256 the periods of time and under the terms and conditions the board [~~deems~~] considers necessary in
257 order to accomplish the purposes of the district. Any sale of [~~the~~] electric power or water may be
258 for the period and upon the terms and conditions as may be provided in contracts authorized by
259 the board and entered into by the district and any purchaser of the electric power [~~having, at the~~
260 ~~time of the commencement of the acquisition and construction of the electric power plant by the~~
261 ~~district,]~~ or water having a system for distributing the electric power or water. Any revenues
262 received by the district pursuant to power or water sale contracts may be used and pledged for the
263 payment of the principal of and interest and any premium on bonds or notes of the district issued
264 to pay all or part of the cost of acquiring, constructing, improving, or enlarging [~~the facilities from~~
265 ~~which the hydroelectric power is generated]~~ facilities, or for any other lawful purpose of the
266 district.

267 (3) The boards of trustees of any two or more irrigation districts may, by appropriate
268 resolutions, enter into agreements with one another, pursuant to Title 11, Chapter 13, Interlocal
269 Cooperation Act, by which the districts may jointly or cooperatively exercise any of the powers
270 conferred by this [~~section~~] part.

271 [~~(3)~~] (4) The board may issue [~~revenue~~] bonds of the district, in the manner provided in
272 this section:

273 (a) to pay for all or part of the costs of the acquisition, construction, improvement, or
274 enlargement of any facilities [~~described in Subsection (1) and other related structures and works]~~
275 and to pay expenses preliminary and incidental thereto;

276 (b) to pay interest on the bonds during acquisition, construction, improvement, or
277 enlargement of any facilities; and

278 (c) to provide for necessary reserves and to pay costs of issuance and sale of the bonds,
279 including, without limitation, printing, registration, and transfer costs, legal, financial advisor's,
280 and rating agency fees, insurance premiums, and underwriter's discount.

281 ~~[(4)]~~ (5) The board may provide that any ~~[revenue]~~ bonds issued and sold under this
282 section shall be payable solely out of a special fund into which the district issuing the ~~[revenue]~~
283 bonds shall be obligated to deposit, as from time to time received, all or a designated portion of
284 the ~~[proceeds from the sale of the services furnished by the facilities of the irrigation district,~~
285 ~~including the facilities to be so acquired, constructed, improved, or enlarged, all pursuant to~~
286 ~~contracts to be entered into as authorized in this section.]~~ revenues or other income of the district.
287 Any pledge of revenues creates a lien which:

288 ~~[(5) Revenue bonds of the district issued under the authority of this section shall]~~

289 (a) is perfected and enforceable upon the effective date of the security agreement pursuant
290 to which the bonds are issued;

291 (b) has priority as against all parties having claims of any kind in tort, contract, or
292 otherwise against the district; and

293 (c) has priority based on the time of the creation of the pledge unless otherwise provided
294 in the security agreement.

295 (6) Bonds of the district may be issued and sold in compliance with Title 11, Chapter 14,
296 Utah Municipal Bond Act, and Title 11, Chapter 27, Utah Refunding Bond Act, as applicable, and
297 may be in the form and denominations and have the provisions and details as are permitted ~~[by~~
298 ~~Title 11, Chapter 14, Utah Municipal Bond Act]~~ thereby. The bonds and any evidences of
299 participation interests in the bonds may be issued, executed, authenticated, registered, transferred,
300 exchanged, and otherwise made to comply with Title 15, Chapter 7, Registered Public Obligations
301 Act, or any other statute relating to the registration of bonds enacted to meet the requirements of
302 Section 149(a) of the Internal Revenue Code of 1986, or any similar or successor federal law, and
303 applicable regulations. Bonds may be issued under the authority of this section at one time or from
304 time to time. If more than one issue or series of bonds is delivered under the authority of this
305 section, the bonds of the respective issue or series shall have the priorities of payment as provided
306 in the proceedings authorizing the bonds.

307 ~~[(6)]~~ (7) Any resolution, indenture, agreement, or other document authorizing [revenue]
308 bonds may contain covenants with the future holders of the bonds as to:

309 (a) the management and operation of the facilities of the irrigation district, including the
310 facilities acquired, constructed, improved, enlarged, or operated pursuant to this section;

311 (b) the imposition and collection of ~~[rates for the services furnished thereby]~~ use charges;

312 (c) the disposition of the revenues;

313 (d) the issuance of future bonds and the creation of future liens and encumbrances against
314 these facilities and the revenues thereof;

315 (e) the carrying of insurance on these facilities and the disposition of the proceeds of
316 insurance;

317 (f) the sale, disposal, or alienation of these facilities; and

318 (g) other pertinent matters deemed necessary or proper by the board to assure the
319 merchantability of the bonds. These covenants and agreements may not be inconsistent with this
320 section.

321 ~~[(7) When a district has issued revenue]~~

322 (8) The district may undertake in the resolution, indenture, agreement, or other document
323 authorizing bonds to make the revenues of the facilities sufficient to pay the expense of their
324 operation and maintenance, and may undertake to make the revenues or net revenues of the
325 facilities sufficient to produce in each year an amount in excess of actual requirements for principal
326 of and interest on the bonds in that year as the board may consider necessary to assure the highest
327 marketability of the bonds.

328 (9) Any resolution, indenture, agreement, or other document authorizing bonds may
329 provide that the bonds will recite that they are issued under authority of this part. The recital will
330 conclusively import full compliance with all of the provisions of this part, and all bonds issued
331 containing the recital will be incontestable for any cause whatsoever after their delivery for value.

332 (10) When a district has issued bonds and pledged for the payment thereof any revenues
333 of the ~~[facilities of the irrigation district, including the facilities acquired, constructed, improved,~~
334 ~~enlarged, or operated pursuant to this section, the district shall establish rates and collect fees and~~
335 ~~charges for the services furnished by these facilities]~~ district, the district shall establish and collect
336 use charges in that amount and at those rates which will be fully sufficient at all times to pay the
337 expenses of operating and maintaining these facilities, to provide a special fund sufficient to assure

338 the prompt payment of principal of and interest on the bonds as principal and interest fall due, and
339 to provide funds for reserves and contingencies and for a depreciation fund for repairs, extensions,
340 and improvements to these facilities as considered necessary to assure adequate and efficient
341 service, all as may be required by the bond resolution. No board or commission other than the
342 board of trustees of the district has authority over or is required to approve the making or fixing
343 of [~~the fees and~~] use charges or the acquisition of property by the district or the issuance of its
344 bonds.

345 ~~[(8) Any restrictions, limitations, or regulations in any other section of this part relative~~
346 ~~to the issuance of bonds or the execution of contracts pursuant to the authority contained in this~~
347 ~~section do not apply to the revenue bonds issued under this section or the execution of contracts~~
348 ~~under the authority of this section. Sections 17A-2-750, 17A-2-751, 17A-2-752, and 17A-2-753~~
349 ~~do not apply to any contract entered into by an irrigation district under this section, nor to the~~
350 ~~issuance of any revenue bonds by an irrigation district under this section.]~~

351 (11) (a) If an irrigation district board determines that the interests of the district require the
352 issuance of bonds or the making of a contract with the United States, the board will, except as
353 provided in Subsection (13), adopt a resolution directing that an election be held to determine
354 whether bonds may be issued or a contract with the United States may be entered for the purposes
355 specified in the resolution.

356 (b) The following are subject to the conditions provided in Title 11, Chapter 14, Utah
357 Municipal Bond Act:

358 (i) adoption of the resolution calling the election;

359 (ii) giving notice of the election;

360 (iii) conduct of the election;

361 (iv) determination of voters' qualifications; and

362 (v) canvassing of election results.

363 (12) In designating the voting places for purposes of the election, the board may treat the
364 entire district as a single precinct or divide the district into precincts.

365 (13) No election is required under this section prior to the issuance of bonds or the making
366 of a contract with the United States except as otherwise required by the constitution or Subsection
367 (14).

368 (14) Notwithstanding anything to the contrary in this section or Title 11, Chapter 14, Utah

369 Municipal Bond Act, no irrigation district may issue bonds, other than bonds issued to refund
370 outstanding bonds, or enter into a contract with the United States unless:

371 (a) the issuance of the bonds or the making of the contract has been approved at an election
372 called and held as provided in this section; or

373 (b) the board of trustees:

374 (i) provides notice of a public hearing on whether to issue the bonds or enter into the
375 contract by:

376 (A) publishing notice in a newspaper published in or of general circulation in the district
377 at least seven days prior to the public hearing which sets forth:

378 (I) the maximum principal amount and the purpose of the proposed bond issue or contract;

379 (II) the date, time, and place of the public hearing;

380 (III) when and where written comments regarding the bonds or the contract may be filed;

381 and

382 (IV) whether the district reasonably expects that paying amounts due on the bonds or under
383 the contract will result in a substantial increase in use charges; and

384 (B) if the district reasonably expects that paying amounts due on the bonds or under the
385 contract will increase use charges by more than \$15 per connection per year, mailing notice to
386 every household containing a qualified voter who is eligible to vote on the bonds or the contract,
387 at least seven days but not more than 30 days before the public hearing, on a minimum three-inch
388 by five-inch postcard or a voter information pamphlet prepared by the governing body that includes
389 the information required by Subsection (14)(b)(i)(A);

390 (ii) holds a public hearing on the date and at the time and place specified in the notice of
391 public hearing, provided that the hearing may be adjourned from time to time to a fixed future time
392 and place;

393 (iii) considers at the public hearing all comments that have been filed or stated at the
394 hearing relating to the bonds or the contract;

395 (iv) after considering all comments received, adopts a resolution during or after the
396 meeting at which the public hearing is held, declaring the intention of the board of trustees to issue
397 bonds or enter into the contract; and

398 (v) directs that notice of the district's intention to issue bonds or enter into the contract be
399 published once in a newspaper of general circulation in the district stating:

400 (A) the maximum principal amount and purpose of the proposed bond issue or contract;

401 (B) when and where petitions may be filed requesting the calling of an election to

402 determine whether the bonds or the contract should be authorized; and

403 (C) when and where a form of petition requesting the calling of an election may be

404 obtained from the district.

405 (15) If, within 30 days after publication of the notice of intention, a petition is filed with

406 the secretary, signed by not less than 5% of the qualified electors of the district, requesting that an

407 election be called to authorize the contract or the bonds, then the board shall call and hold an

408 election as provided in this section before the bonds are issued or the contract is entered into.

409 (16) If no petition is filed, or if the number of signatures filed within the 30-day period is

410 less than the required number, the board of trustees may proceed to issue the bonds or enter into

411 the contract.

412 Section 6. Section **17A-2-717.5** is enacted to read:

413 **17A-2-717.5. Validation of previous bond issues.**

414 All bonds issued in accordance with the provisions of this part as they existed prior to May

415 6, 2002, are valid and shall be governed by the provisions of this part as they existed at the time

416 of the issuance of the bonds.

417 Section 7. Section **17A-2-718** is amended to read:

418 **17A-2-718. Trustees to determine amounts required for current years --**

419 **Establishment of sinking funds and reserve funds -- Certification of amounts.**

420 The board of trustees shall, on or before July 1st of each year, determine the amount of

421 money required for the current year[;] to pay interest on and all maturing installments of principal

422 of any bonds, and warrants, and all payments due or to become due to the United States under any

423 contract between the district and the United States accompanying which bonds of the district have

424 not been deposited with the United States as in Section 17A-2-711, and all operation and

425 maintenance or rental payments to be made by the district to the United States under the provisions

426 of any such contract between the United States and the district, and all water payments and all

427 operation and maintenance or rental payments to be made by the district to other entities under the

428 provisions of any contract between the district and other entities, and meet the cost of any

429 construction or reconstruction proposed to be covered by [~~annual assessments~~] use charges, and

430 all maintenance, operating and current expenses, including the payment of assessments upon stock

431 of irrigation, canal, or reservoir companies owned by the district, and the amount necessary to meet
432 the obligations of local improvement districts, and establish, keep, and maintain sinking funds
433 sufficient to assure the prompt payment of principal of and interest on the bonds as principal and
434 interest fall due, and reserve funds at the level required by any contract between the district and
435 the United States, and other entities; and establish, keep and maintain adequate reserve funds for
436 depreciation, repairs, extensions and improvements to the works necessary to assure adequate and
437 efficient service, as determined by the board, and certify to the county legislative body of the
438 county in which the office of the district is located, those amounts together with such additional
439 amount as may be necessary to meet any deficiencies theretofore incurred, and if so provided in
440 case of contract with the United States a further amount to cover any deficit in payments due the
441 United States thereunder which may have resulted from delinquent ~~[assessments]~~ use charges for
442 any preceding year.

443 Section 8. Section **17A-2-719.5** is enacted to read:

444 **17A-2-719.5. Use charges -- Duty of county assessors.**

445 (1) The board of trustees of the district may impose use charges upon the customers or
446 lands served by the district. The use charges may be based upon the amount of water or electricity
447 received from the district, the area of the land served, or any other reasonable basis determined by
448 the board of trustees. In determining the use charges to be imposed, the board of trustees may
449 consider the cost of maintaining and operating the district, the cost of acquiring, purchasing,
450 constructing, improving, or enlarging district facilities, the cost of issuing and paying debt service
451 on bonds of the district, and the cost of providing for necessary reserves.

452 (2) If the district imposes use charges based upon the size of the land served, the district
453 shall notify the county assessor of the charge to be imposed per unit of land or portion thereof
454 served by the district. The county assessor of each county embracing the whole or a part of any
455 irrigation district shall, after determining the size of each parcel of property served by the district,
456 calculate the use charges.

457 (3) The board of trustees of the district may divide the district into units and apply different
458 use charges to the various units.

459 (4) The use charges imposed under this section may not be calculated on the basis of the
460 value of property and do not constitute ad valorem property taxes or other taxes.

461 Section 9. Section **17A-2-721** is amended to read:

462 **17A-2-721. Duties of county treasurer -- Liability -- Accounts to be kept and methods**
463 **of payments -- Deposit of funds.**

464 (1) The county treasurer of each county in which any irrigation district is located shall be
465 liable upon the treasurer's official bond and to indictment and criminal prosecution for
466 malfeasance, or failure to perform any duty as county treasurer as provided by law in other cases
467 as county treasurer. ~~[The]~~

468 (2) If the district imposes use charges based upon the size of land served pursuant to
469 Subsection 17A-2-719.5(1), the treasurer shall collect, receive, and receipt for all moneys
470 belonging to the district arising through ~~[taxation]~~ use charges.

471 (3) The county treasurer of each county in which any irrigation district is located shall, in
472 whole or in part, furnish each landowner under the district within the county with the valuation
473 notice for general taxes, and a separate notice of ~~[the taxable value for district taxes]~~ use charges,
474 and of the day fixed by the board of equalization for hearing complaints, and collect and receipt
475 for all ~~[taxes levied]~~ use charges, but payment of district ~~[taxes]~~ use charges may be received and
476 receipted for separately from taxes upon real estate for county purposes. ~~[The county treasurer~~
477 ~~shall receive in payment of the general fund tax for the year in which the taxes are levied, warrants~~
478 ~~drawn against the general fund the same as so much lawful money of the United States, if the~~
479 ~~warrant does not exceed the amount of the general fund tax which the person tendering it owes.~~
480 ~~The county treasurer shall receive in payment of the district bond fund taxes for the year in which~~
481 ~~the taxes were levied, interest coupons or bonds of the irrigation district maturing within the year~~
482 ~~the same as so much lawful money of the United States, if the interest coupons or bonds do not~~
483 ~~exceed the amount of district bond fund tax which the person tendering them owes. Except in case~~
484 ~~of contract obligation due to the United States as provided in Section 17A-2-717, any landowner~~
485 ~~may tender, and the county treasurer shall receive, money, bonds, or coupons of the district~~
486 ~~equaling the landowner's proportion of the total issue of bonds of the district, with interest to~~
487 ~~maturity, based on the proportion of the landowner's water allotment to the total final water~~
488 ~~allotment of the district, and taxes for payment of the bonds or interest on the bonds of the district~~
489 ~~may not subsequently be levied against the landowner.]~~

490 (4) The county treasurer of each county comprising a portion of the irrigation district shall,
491 on the first Monday of each month, remit to the district all ~~[moneys, warrants, coupons, or bonds]~~
492 monies previously collected or received on account of the district. The funds so remitted shall be

493 deposited to the credit of the district by the [secretary] treasurer of the district. [~~The secretary of~~
494 ~~the district shall serve also as treasurer of the district, unless a treasurer is otherwise provided by~~
495 ~~the board. The district shall keep a bond fund account, United States contract fund account, local~~
496 ~~improvement fund accounts, reserve fund account and a general fund account. The bond fund~~
497 ~~account shall consist of all moneys received on account of interest and principal of bonds issued~~
498 ~~by the district, the accounts for interest and principal shall be kept separate, and the United States~~
499 ~~contract fund account shall consist of all moneys received on account of any and all payments due~~
500 ~~or to become due the United States accompanying which bonds of the district have not been~~
501 ~~deposited with the United States as provided in Section 17A-2-711. The local improvement fund~~
502 ~~accounts shall consist of moneys received on account of local improvements of local improvement~~
503 ~~district or districts respectively. The reserve fund account shall consist of funds required~~
504 ~~contractually to be kept and maintained and for depreciation, repairs, extensions, and~~
505 ~~improvements as determined by the board. The general fund shall consist of all other moneys or~~
506 ~~general fund warrants received by the collection of taxes or otherwise. The district shall pay out~~
507 ~~of the bond fund, when due, the interest and principal of the bonds of the district, at the time and~~
508 ~~place specified in the bonds, and shall pay out of the United States contract under any fund when~~
509 ~~due all payments due to the United States under any contract between the district and the United~~
510 ~~States accompanying which bonds of the district have not been deposited with the United States~~
511 ~~as provided in Section 17A-2-711, and shall pay out of the local improvement fund accounts~~
512 ~~respectively, all obligations of local improvement districts as they become due, and shall pay out~~
513 ~~of the reserve fund those amounts contractually to be paid from it and repairs, extensions, and~~
514 ~~improvement charges for which the reserve funds were provided.]~~

515 [In cases where bonds have been deposited with the United States as provided in this part,
516 the moneys to be paid to the United States for rentals or operation and maintenance charges, if not
517 secured by bonds, shall be paid out of the general fund account along with all other construction,
518 operation, and maintenance charges of the district for which no reserve funds exist. The district
519 shall pay out of the general fund only upon the order of the board of trustees of the district, signed
520 by the chair or other trustee authorized by the board and countersigned by the secretary of the
521 district. All district taxes collected and paid to county treasurers as provided shall be received by
522 the treasurers in their official capacity, and they shall be responsible for the safekeeping and
523 remittance of the taxes to the district the same as for other moneys collected by them as treasurers.]

524 County treasurers shall receive as sole compensation for the collection of the taxes the amount
525 allowed by the board of trustees, which is in addition to the regular salary of the county treasurers
526 as provided by law. The district may deposit the district funds with any bank or trust company.]

527 Section 10. Section ~~17A-2-722~~ is amended to read:

528 **17A-2-722. Lien for unpaid use charges -- Sale of land for delinquent use charges**
529 **--Redemption period.**

530 [The revenue laws of this state for the assessment, levying and collecting of taxes on real
531 estate for county purposes, except as herein modified, shall be applicable for the purposes of this
532 part, including the enforcement of penalties and forfeiture for delinquent taxes; provided that lands
533 sold for delinquent district taxes shall be sold separately for such tax; and provided further, that
534 at any time after the sale shall have]

535 Any unpaid and delinquent use charges will be certified by the secretary of the district to
536 the treasurer or assessor of the county in which the delinquent premises are located. The amount
537 of the delinquent use charges, together with interest and penalties, will immediately upon the
538 certification become a lien on the delinquent premises on a parity with and collectible at the same
539 time and in the same manner as general county taxes are a lien on the premises and are collectible.
540 All methods of enforcement available for the collection of general county taxes, including sale of
541 the delinquent premises, are available and may be used in the collection of the delinquent use
542 charges. At any time after the sale of property resulting from delinquent use charges has closed
543 and before the time for redemption has expired, the county treasurer is authorized and required to
544 sell and assign the interest of the county in any of the real estate sold to the county for delinquency
545 of district [taxes] use charges to the district itself, or to any person or corporation holding a
546 recorded mortgage or other lien against such real estate, or to any holder of bonds issued by such
547 district, or to any person who will pay the [taxes] use charges, interest, penalty, and costs[; and
548 provided further, that the]. The period of redemption from sale for [taxes] delinquent use charges
549 under this part shall be two years. In all respects, [an] the irrigation [or water conservation] district
550 shall be the beneficiary of [taxes assessed and levied] use charges imposed by it, provided,
551 however, that the county treasurer [shall] may retain costs and expenses provided by law for the
552 advertisement, sale, and redemption of [irrigation or water conservation district taxes. All taxes
553 levied by an irrigation district under the provisions of this part, or any act supplemental or
554 amendatory thereof, shall constitute a first lien on the property assessed, which lien shall remain

555 ~~in force until the taxes are paid] use charges.~~

556 Section 11. Section **17A-2-723** is amended to read:

557 **17A-2-723. Construction -- Notice -- Awarding contracts -- Contractor's bonds.**

558 (1) As used in this section, the word "sealed" does not preclude acceptance of
559 electronically sealed and submitted bids or proposals in addition to bids or proposals manually
560 sealed and submitted.

561 (2) After adopting a plan for the construction of [~~canals, reservoirs, and works~~] facilities,
562 the board of trustees shall give notice thereof by publication in the county in which the principal
563 office of the district is located at least once not less than ten days prior to the expiration of the
564 period in which bids shall be received, and the other notice as they consider advisable calling for
565 bids for the furnishing of material or construction of the work or any portion thereof.

566 (3) If less than the whole work is advertised, then the portion so advertised must be
567 particularly described in the notice; the notice shall set forth that plans and specifications, or
568 specifications alone where there are no plans, may be seen at the office of the board, and that the
569 board will receive sealed proposals therefor, and that the contract will be let to the lowest
570 responsible bidder, stating the time and the place for opening the proposal which at that time and
571 place shall be opened in public, and as soon as convenient thereafter the board shall let the work,
572 either in portions or as a whole, or award and order for materials, to the lowest responsible bidder,
573 or it may reject any or all bids, and thereupon readvertise for proposals, or proceed to construct the
574 work under its own superintendence.

575 (4) Contracts for the purchase of material shall be awarded to the lowest responsible bidder
576 unless all bids are rejected or the board determines to readvertise for bids.

577 (5) The person or persons to whom a contract may be awarded shall enter into a bond, with
578 good and sufficient sureties, to be approved by the board, payable to the district for not less than
579 25% of the amount of the contract price and conditioned for the faithful performance of the
580 contract, but no such bond need be required by the board where materials are contracted for the
581 bond requirement.

582 (6) The work shall be done under the direction and to the satisfaction of the engineer in
583 charge, and be approved by the board, and shall be paid for out of the general fund account;
584 provided, that the provisions of this section shall not apply in the case of any contract between the
585 district and the United States.

586 (7) Nothing herein contained shall be construed to prohibit the district from purchasing
587 material or doing any work required by it without advertising for bids and without the letting of
588 a contract where the estimated cost of the work or the material does not exceed \$30,000 or in cases
589 of emergencies the board of trustees may let contracts for the work required in the emergency
590 without advertising for bids or may cause the work to be done by the district itself.

591 Section 12. Section **17A-2-724** is amended to read:

592 **17A-2-724. Claims -- Manner of payment -- Registry of warrants -- Emergency loans.**

593 No claims shall be paid by the district until the same shall have been allowed by the board,
594 and then only upon warrants signed by the chair, or other trustee authorized by the board, and
595 countersigned by the secretary, which warrants shall state the date authorized by the board and for
596 what purpose; and if the district has not sufficient money on hand to pay such warrant when it is
597 presented for payment, the secretary or treasurer of the district shall endorse thereon "Not paid for
598 want of funds; this warrant draws interest from date of presentation at 6% per annum," and endorse
599 thereon the date when so presented, over the secretary or treasurer's signature, and from the time
600 of such presentation until paid such warrant shall draw interest at the rate of 6% per annum;
601 provided, when there is more than the sum of \$100 in the hands of the district it shall be applied
602 upon the warrant. All claims against the district shall be verified as required in the case of claims
603 filed against counties in this state, and the secretary of the district is hereby authorized and
604 empowered to administer oaths to the parties verifying the claims, as the county clerk or a notary
605 public might do. The district shall keep a register in which shall be entered each warrant, to whom
606 payable, the date of the presentation for payment, the date of payment, and the amount paid in
607 redemption thereof, and all warrants shall be paid in the order of their presentation for payment
608 to the district. All warrants shall be drawn payable to the claimant or bearer in the same manner
609 as county warrants. The district is also authorized to pay claims against the district by checks
610 signed by the chair, or other trustee authorized by the board, and countersigned by the [secretary]
611 treasurer. To meet necessary expenses in anticipation of the collection of [~~taxes~~] use charges, the
612 board of trustees may incur indebtedness by borrowing money or otherwise, not exceeding the
613 [~~taxes~~] use charges for the current year, and as evidence of such indebtedness may issue negotiable
614 notes of the district, payable in not more than one year from date thereof. In case of a break in the
615 reservoir or canal or other disaster, the board of trustees is authorized to borrow money and make
616 the necessary repairs.

617 Section 13. Section **17A-2-726** is amended to read:

618 **17A-2-726. Compensation of officials -- Prohibitions -- Penalties.**

619 The salary of the secretary, manager, engineer, and other officers and employees shall be
620 fixed by the board of trustees. No director or any officer named in this part shall, in any manner
621 be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in
622 the profits to be derived therefrom; nor shall receive any bonds, gratuity, or bribe, and for any
623 violation of this provision, such officer shall be considered guilty of a felony, and upon conviction
624 therefor he shall forfeit office, and be punished by a fine not exceeding \$5,000, or by imprisonment
625 in the penitentiary for a term of not less than one or more than five years. The violation of this
626 provision will not cause any bonds held by third persons or contracts with third persons related to
627 bonds to be invalid or unenforceable.

628 Section 14. Section **17A-2-754** is amended to read:

629 **17A-2-754. Transfer of water rights -- Notice to landowners.**

630 The board of trustees of any irrigation district [~~with the consent of the bondholders and~~
631 ~~other creditors,~~] may sell, transfer, and convey the water rights and all or any other property
632 belonging to the district to any irrigation company; provided, however, that no such sale, transfer,
633 or conveyance shall be made in violation of any agreement with the bondholders or other creditors
634 and until notice of the intention of the board to make the same [~~shall have~~] has been published, as
635 in Subsection 17A-2-751(2), and mailed to each landowner in the district at his last known address
636 at least 30 days prior to the expiration of the time fixed for protest, and provided further that no
637 such sale, transfer, or conveyance shall be made if within 30 days from the last publication of such
638 notice the owners of 1/3 of the acre-feet of water allotted in the district file with the board their
639 written protest against such sale, transfer, or conveyance.

640 Section 15. Section **17A-2-755** is amended to read:

641 **17A-2-755. Districts declared bodies corporate -- Tax exemption of bonds and**
642 **securities except corporate franchise tax.**

643 (1) Irrigation districts organized under this part and all irrigation districts heretofore
644 organized under the laws of this state are hereby declared to be bodies corporate and politic, and
645 the bonds and other securities of such corporations are exempt from taxation within this state,
646 except for the corporate franchise tax.

647 (2) No district created under this part is a municipal corporation within the meaning of

648 Article XIV, Section 4, Utah Constitution, or a political subdivision of any county or municipality.

649 Section 16. Section **17A-2-756** is amended to read:

650 **17A-2-756. Inclusion of state lands.**

651 (1) Lands belonging to the state not under contract of sale may be included in any
652 irrigation district upon petition by the state entity responsible for the administration of the affected
653 lands for the inclusion of those lands.

654 (2) No such state lands included within any legally organized irrigation district [~~shall~~] may
655 ever be assessed, nor [~~shall~~] do any of the [~~preceding sections~~] provisions relative to the levying
656 and collection of assessments [~~and taxes~~] in this part apply.

657 (3) The entity responsible for the administration of the affected lands and the state engineer
658 shall make a thorough examination as to the benefits to accrue to these lands by reason of the
659 inclusion of the lands in the irrigation district, and by reason of the acquiring of water rights for
660 the lands.

661 (4) (a) The entity responsible for the administration of the affected lands may enter into
662 contract with the board of trustees of the irrigation district, specifying by legal subdivisions the
663 land benefitted and the amount of benefit to accrue to each tract of land.

664 (b) The contract shall provide that annual payments shall be made to the district, to be
665 applied on the cost of constructing the irrigation works for the district, until the full amount of the
666 benefit is paid.

667 (c) The entity responsible for the administration of the affected lands has the option to pay
668 the full amount of the contract at any time, upon any or all of the legal subdivisions.

669 Section 17. Section **17A-2-761** is amended to read:

670 **17A-2-761. Validation of the creation and organization of irrigation districts and of**
671 **district elections.**

672 All proceedings that have been adopted and actions taken before [~~March 16, 1987~~] January
673 1, 2002, under authority of this part, purporting to create any irrigation district or purporting to
674 provide for the inclusion of any additional area in any irrigation district, including all petitions
675 filed and all notices given, published, and mailed in connection with any such creation and any
676 inclusion, are validated, ratified, and confirmed, notwithstanding any failure to comply with any
677 one or more pertinent statutory provisions, and each irrigation district so created or enlarged is
678 declared to be a validly created and existing district. All proceedings and actions taken with

679 respect to the appointment, election, and organization of a board of trustees and officers for each
680 irrigation district are validated, ratified, and confirmed and each board of trustees is declared to
681 be the de facto and de jure governing body of its respective irrigation district.

682 Section 18. **Repealer.**

683 This act repeals:

684 Section 17A-2-701, **Certain exemptions -- Entrymen.**

685 Section 17A-2-714, **Judicial notice -- Presumptions as to organization.**

686 Section 17A-2-715, **Issuance of bonds -- Special election -- Contract with the United**
687 **States -- Additional bonding -- Validation of previous issues.**

688 Section 17A-2-716, **Sale of bonds -- Use of funds.**

689 Section 17A-2-717, **Assessments upon real property -- Payment of bonds.**

690 Section 17A-2-719, **Duty of county assessors -- Basis of valuation -- Uniformity --**
691 **Returns -- Apportionment in case of contracts with United States.**

692 Section 17A-2-720, **Fixing tax levy -- Covering delinquencies -- All taxes special.**

693 Section 17A-2-725, **Tolls, charges, assessments.**

694 Section 17A-2-727, **Debt limit -- Interest on warrants.**

695 Section 17A-2-768, **Effect of repeals construed -- Procedure against defaulting**
696 **members.**

Legislative Review Note
as of 11-14-01 2:09 PM

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

Office of Legislative Research and General Counsel

Committee Note

The Political Subdivisions Interim Committee recommended this bill.