

HB0293S02 compared with HB0293S01

~~text~~ shows text that was in HB0293S01 but was deleted in HB0293S02.

Inserted text shows text that was not in HB0293S01 but was inserted into HB0293S02.

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Representative Mike Schultz proposes the following substitute bill:

MOUNTAINOUS PLANNING DISTRICT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to mountainous planning districts.

Highlighted Provisions:

This bill:

- ▶ addresses municipal jurisdiction over mountainous planning districts;
- ▶ modifies the number of board members of a planning commission that are required to have ties to a mountainous planning district;
- ▶ reduces the areas that a municipal legislative body may designate as a mountainous planning district;
- ▶ enacts and amends repeal dates for provisions relating to mountainous planning districts; and
- ▶ makes technical and conforming changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

10-9a-304, as last amended by Laws of Utah 2015, Chapter 465

17-27a-301, as last amended by Laws of Utah 2016, Chapter 411

17-27a-901, as last amended by Laws of Utah 2016, Chapter 411

63I-2-210, as last amended by Laws of Utah 2016, Chapter 14

63I-2-217, as last amended by Laws of Utah 2016, Chapters 348 and 411

Utah Code Sections Affected by Revisor Instructions:

63I-2-217, as last amended by Laws of Utah 2016, Chapters 348 and 411

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

Section 1. Section 10-9a-304 is amended to read:

10-9a-304. State and federal property -- Mountainous planning district.

(1) Unless otherwise provided by law, nothing contained in this chapter may be construed as giving a municipality jurisdiction over property owned by the state or the United States.

(2) (a) Except as provided in Subsection (2)(b), for purposes of this chapter, a municipality, a municipal planning commission, or a municipal land use authority does not have jurisdiction over property located within a mountainous planning district, as that term is defined in Section 17-27a-103.

(b) Subsection (2)(a) does not apply to a municipality if:

(i) (A) the municipality is wholly located within the boundaries of a mountainous planning district; and

(B) the municipality was incorporated before 1971;

(ii) the municipality exercises the municipality's extraterritorial jurisdiction under Section 10-8-15; or

(iii) subject to Subsection (2)(c), a local health authority has granted the municipality

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joint authority to regulate the municipality's watershed areas.

(c) The exception under Subsection (2)(b)(iii) applies only for matters related to regulation of the watershed within a watershed area.

Section 2. Section 17-27a-301 is amended to read:

17-27a-301. Ordinance establishing planning commission required -- Exception -- Ordinance requirements -- Planning advisory area planning commission -- Compensation.

(1) (a) Except as provided in Subsection (1)(b), each county shall enact an ordinance establishing a countywide planning commission for the unincorporated areas of the county not within a planning advisory area.

(b) Subsection (1)(a) does not apply if all of the county is included within any combination of:

- (i) municipalities;
- (ii) planning advisory areas with their own planning commissions; and
- (iii) mountainous planning districts.

(c) (i) Notwithstanding Subsection (1)(a), and except as provided in Subsection (1)(c)(ii), a county that designates a mountainous planning district shall enact an ordinance, subject to Subsection (1)(c)(ii), establishing a planning commission that has jurisdiction over the entire mountainous planning district, including areas of the mountainous planning district that are also located within a municipality or are unincorporated.

(ii) A planning commission described in Subsection (1)(c)(i):

(A) does not have jurisdiction over a municipality described in Subsection 10-9a-304(2)(b); and

(B) has jurisdiction subject to a local health department exercising its authority in accordance with Title 26A, Chapter 1, Local Health Departments and a municipality exercising the municipality's authority in accordance with Section 10-8-15.

(iii) The ordinance shall require that:

(A) members of the planning commission represent areas located in the unincorporated and incorporated county;

(B) members of the planning commission be registered voters who reside either in the unincorporated or incorporated county;

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(C) at least one member of the planning commission resides within the mountainous planning district and another member either resides or owns property within the mountainous planning district; and

(D) the county designate up to four seats on the planning commission, and fill each vacancy in the designated seats in accordance with the procedure described in Subsection (7).

(2) (a) The ordinance described in Subsection (1)(a) or (c) shall define:

(i) the number and terms of the members and, if the county chooses, alternate members;

(ii) the mode of appointment;

(iii) the procedures for filling vacancies and removal from office;

(iv) the authority of the planning commission;

(v) subject to Subsection (2)(b), the rules of order and procedure for use by the planning commission in a public meeting; and

(vi) other details relating to the organization and procedures of the planning commission.

(b) Subsection (2)(a)(v) does not affect the planning commission's duty to comply with Title 52, Chapter 4, Open and Public Meetings Act.

(3) (a) (i) If the county establishes a planning advisory area planning commission, the county legislative body shall enact an ordinance that defines:

(A) appointment procedures;

(B) procedures for filling vacancies and removing members from office;

(C) subject to Subsection (3)(a)(ii), the rules of order and procedure for use by the planning advisory area planning commission in a public meeting; and

(D) details relating to the organization and procedures of each planning advisory area planning commission.

(ii) Subsection (3)(a)(i)(C) does not affect the planning advisory area planning commission's duty to comply with Title 52, Chapter 4, Open and Public Meetings Act.

(b) The planning commission for each planning advisory area shall consist of seven members who shall be appointed by:

(i) in a county operating under a form of government in which the executive and legislative functions of the governing body are separated, the county executive with the advice

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and consent of the county legislative body; or

(ii) in a county operating under a form of government in which the executive and legislative functions of the governing body are not separated, the county legislative body.

(c) (i) Members shall serve four-year terms and until their successors are appointed and qualified.

(ii) Notwithstanding the provisions of Subsection (3)(c)(i), members of the first planning commissions shall be appointed so that, for each commission, the terms of at least one member and no more than two members expire each year.

(d) (i) Each member of a planning advisory area planning commission shall be a registered voter residing within the planning advisory area.

(ii) Subsection (3)(d)(i) does not apply to a member described in Subsection (4)(a) if that member was, prior to May 12, 2015, authorized to reside outside of the planning advisory area.

(4) (a) A member of a planning commission who was elected to and served on a planning commission on May 12, 2015, shall serve out the term to which the member was elected.

(b) Upon the expiration of an elected term described in Subsection (4)(a), the vacant seat shall be filled by appointment in accordance with this section.

(5) Upon the appointment of all members of a planning advisory area planning commission, each planning advisory area planning commission under this section shall begin to exercise the powers and perform the duties provided in Section 17-27a-302 with respect to all matters then pending that previously had been under the jurisdiction of the countywide planning commission or planning advisory area planning and zoning board.

(6) The legislative body may fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended.

(7) (a) Subject to Subsection (7)(f), a county shall fill a vacancy in a planning commission seat described in Subsection (1)(c)(iii)(D) in accordance with this Subsection (7).

(b) If a county designates one or more planning commission seats under Subsection (1)(c)(iii)(D), the county shall identify at least one and up to four cities that:

(i) (A) are adjacent to the mountainous planning district; and

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(B) border the entrance to a canyon that is located within the boundaries of the mountainous planning district and accessed by a paved road maintained by the county or the state; or

(ii) exercise extraterritorial jurisdiction in accordance with Section 10-8-15.

(c) When there is a vacancy in a planning commission seat described in Subsection (1)(c)(iii)(D), the county shall send a written request to one of the cities described in Subsection (7)(b), on a rotating basis, if applicable, for a list of three individuals, who satisfy the requirements described in Subsection (1)(c)(iii)(B), to fill the vacancy.

(d) The city shall respond to a written request described in Subsection (7)(c) within 60 days after the day on which the city receives the written request.

(e) After the county receives the city's list of three individuals, the county shall submit one of the individuals on the list for appointment to the vacant planning commission seat in accordance with county ordinance.

(f) The county shall fill the vacancy in accordance with the county's standard procedure if the city fails to timely respond to the written request.

Section ~~17-27a-901~~3. Section **17-27a-901** is amended to read:

17-27a-901. Mountainous planning district.

(1) (a) The legislative body of a county of the first class may adopt an ordinance designating an area located within the county as a mountainous planning district if the legislative body determines that:

(i) the area is primarily used for recreational purposes, including canyons, foothills, ski resorts, wilderness areas, lakes and reservoirs, campgrounds, or picnic areas within the Wasatch Range;

(ii) the area is used by residents of the county who live inside and outside the limits of a municipality;

(iii) the total resident population in the proposed mountainous planning district is equal to or less than 5% of the population of the county; ~~and~~

(iv) the area is within the unincorporated area of the county or was within the unincorporated area of the county before May 12, 2015~~[-]~~; and

(v) the area includes land designated as part of a national forest on or before May 9, 2017.

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(b) (i) A mountainous planning district may include within its boundaries a municipality, whether in whole or in part.

(ii) Except as provided in Subsection (1)(b)(iv), if a mountainous planning district includes within its boundaries an unincorporated area, and that area subsequently incorporates as a municipality:

(A) the area of the incorporated municipality that is located in the mountainous planning district is included within the mountainous planning district boundaries; and

(B) property within the municipality that is also within the mountainous planning district is subject to the authority of the mountainous planning district.

(iii) A subdivision and zoning ordinance that governs property located within a mountainous planning district shall control over any subdivision or zoning ordinance, as applicable, that a municipality may adopt.

(iv) A county shall allow an area within the boundaries of a mountainous planning district to withdraw from the mountainous planning district if:

(A) the area contains less than 100 acres;

(B) the area is annexed to a city in accordance with Title 10, Chapter 2, Part 4, Annexation;

(C) the county determines that the area does not contain United States Forest Service land or land that is designated as watershed; and

(D) the county determines that the area is not used by individuals for recreational purposes.

(v) An area described in Subsection (1)(b)(iv) that withdraws from a mountainous planning district is not subject to the authority of the mountainous planning district.

(c) The population figure under Subsection (1)(a)(iii) shall be derived from a population estimate by the Utah Population Estimates Committee.

(d) If any portion of a proposed mountainous planning district includes a municipality with a land base of five square miles or less, the county shall ensure that all of that municipality is wholly located within the boundaries of the mountainous planning district.

(2) (a) Notwithstanding Subsection 10-9a-102(2), 17-34-1(2)(a), or 17-50-302(1)(b), or Section 17-50-314, a county may adopt a general plan and adopt a zoning or subdivision ordinance for a property that is located within:

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- (i) a mountainous planning district; and
- (ii) a municipality.
- (b) A county plan or zoning or subdivision ordinance governs a property described in

Subsection (2)(a).

Section 4. Section 63I-2-210 is amended to read:

63I-2-210. Repeal dates -- Title 10.

~~[(1) Subsection 10-2a-106(2), the language that states "including a township incorporation procedure as defined in Section 10-2a-105," is repealed July 1, 2016.]~~

~~[(2) Subsection 10-2a-410(3)(d)(ii) is repealed January 1, 2017.]~~

~~[(3) Section 10-2a-105 is repealed July 1, 2016.]~~

~~[(4)] (1) Subsection 10-9a-304(2) is repealed June 1, 2016.~~

~~Section 2} [2016] 2020.~~

(2) When repealing Subsection 10-9a-304(2), the Office of Legislative Research and General Counsel shall, in addition to the office's authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

Section 5. Section 63I-2-217 is amended to read:

63I-2-217. Repeal dates -- Title 17.

(1) Subsection 17-27a-102(1)(b), the language that states "or a designated mountainous planning district" is repealed June 1, [2017] 2020.

(2) (a) Subsection 17-27a-103(15)(b) is repealed June 1, [2017] 2020.

(b) Subsection 17-27a-103(34) is repealed June 1, [2017] 2020.

(3) Subsection 17-27a-210(2)(a), the language that states "or the mountainous planning district area" is repealed June 1, [2017] 2020.

(4) (a) Subsection 17-27a-301(1)(b)(iii) is repealed June 1, [2017] 2020.

(b) Subsection 17-27a-301(1)(c) is repealed June 1, [2017] 2020.

(c) Subsection 17-27a-301(2)(a), the language that states "described in Subsection (1)(a) or (c)" is repealed June 1, [2017] 2020.

(5) Subsection 17-27a-302(1), the language that states ", or mountainous planning district" and "or the mountainous planning district," is repealed June 1, [2017] 2020.

(6) Subsection 17-27a-305(1)(a), the language that states "a mountainous planning district or" and ", as applicable" is repealed June 1, [2017] 2020.

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- (7) (a) Subsection 17-27a-401(1)(b)(ii) is repealed June 1, [2017] 2020.
- (b) Subsection 17-27a-401(6) is repealed June 1, [2017] 2020.
- (8) (a) Subsection 17-27a-403(1)(b)(ii) is repealed June 1, [2017] 2020.
- (b) Subsection 17-27a-403(1)(c)(iii) is repealed June 1, [2017] 2020.
- (c) Subsection (2)(a)(iii), the language that states "or the mountainous planning district" is repealed June 1, [2017] 2020.
- (d) Subsection 17-27a-403(2)(c)(i), the language that states "or mountainous planning district" is repealed June 1, [2017] 2020.
- (9) Subsection 17-27a-502(1)(d)(i)(B) is repealed June 1, [2017] 2020.
- (10) Subsection 17-27a-505.5(2)(a)(iii) is repealed June 1, [2017] 2020.
- (11) Subsection 17-27a-602(1)(b), the language that states "or, in the case of a mountainous planning district, the mountainous planning district" is repealed June 1, [2017] 2020.
- (12) Subsection 17-27a-604(1)(b)(i)(B) is repealed June 1, [2017] 2020.
- (13) Subsection 17-27a-605(1), the language that states "or mountainous planning district land" is repealed June 1, [2017] 2020.
- (14) Title 17, Chapter 27a, Part 9, Mountainous Planning District, is repealed June 1, [2017] 2020.
- (15) On June 1, [2016] 2020, when making the changes in this section, the Office of Legislative Research and General Counsel shall:
- (a) in addition to its authority under Subsection 36-12-12(3), make corrections necessary to ensure that sections and subsections identified in this section are complete sentences and accurately reflect the office's [perception] understanding of the Legislature's intent; and
- (b) identify the text of the affected sections and subsections based upon the section and subsection numbers used in [~~Laws of Utah 2015, Chapter 465~~] this bill.

Section ~~3}6~~ 6. **Revisor instructions.**

The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, replace the language "this bill" in Subsection 63I-2-217(15)(b) with the bill's designated chapter number in the Laws of Utah.