

1 **LOCAL GOVERNMENT MODIFICATIONS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Stephen G. Handy**

5 Senate Sponsor: Daniel Hemmert

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the required number of board members for certain local district
10 boards of trustees.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ provides that a local district board of trustees is not required to have an odd number
- 14 of members once the board reaches a certain size;
- 15 ▶ amends provisions related to the membership of a municipal services district board
- 16 of trustees; and
- 17 ▶ makes technical and conforming changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **17B-1-302**, as last amended by Laws of Utah 2017, Chapters 112 and 263

25 **17B-2a-404**, as last amended by Laws of Utah 2017, Chapter 112

26 **17B-2a-604**, as last amended by Laws of Utah 2017, Chapter 112

27 **17B-2a-905**, as last amended by Laws of Utah 2017, Chapters 112 and 138

28 **17B-2a-1106**, as last amended by Laws of Utah 2016, Chapter 176

29

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

31 Section 1. Section **17B-1-302** is amended to read:

32 **17B-1-302. Board member qualifications -- Number of board members.**

33 (1) Each member of a local district board of trustees shall be:

34 (a) a registered voter at the location of the member's residence; and

35 (b) except as otherwise provided in Subsection (2) or (3), a resident within:

36 (i) the boundaries of the local district; and

37 (ii) if applicable, the boundaries of the division of the local district from which the
38 member is elected or appointed.

39 (2) (a) As used in this Subsection (2):

40 (i) "Proportional number" means the number of members of a board of trustees that
41 bears, as close as mathematically possible, the same proportion to all members of the board that
42 the number of seasonally occupied homes bears to all residences within the district that receive
43 service from the district.

44 (ii) "Seasonally occupied home" means a single-family residence:

45 (A) that is located within the local district;

46 (B) that receives service from the local district; and

47 (C) whose owner does not reside permanently at the residence but may occupy the
48 residence on a temporary or seasonal basis.

49 (b) If over 50% of the residences within a local district that receive service from the
50 local district are seasonally occupied homes, the requirement under Subsection (1)(b) is
51 replaced, for a proportional number of members of the board of trustees, with the requirement
52 that the member be an owner of land, or an agent or officer of the owner of land, that:

53 (i) receives service from the district; and

54 (ii) is located within the local district and, if applicable, the division from which the
55 member is elected.

56 (3) (a) For a board of trustees member in a basic local district that has within the
57 district's boundaries fewer than one residential dwelling unit per 10 acres of land, the

58 requirement under Subsection (1)(b) is replaced with the requirement that the member be an
59 owner of land within the local district that receives service from the district, or an agent or
60 officer of the owner.

61 (b) A member of the board of trustees of a service area described in Subsection
62 17B-2a-905(2)(a) or (3)(a), who is an elected official of the county appointing the individual, is
63 not subject to the requirements described in Subsection (1)(b) if the elected official was elected
64 at large by the voters of the county.

65 (c) Notwithstanding Subsection (1)(b), the county legislative body may appoint to the
66 local district board one of the county legislative body's own members, regardless of whether the
67 member resides within the boundaries described in Subsection (1)(b), if:

68 (i) the county legislative body satisfies the procedures to fill a vacancy described in:

69 (A) for the appointment of a new board member, Subsections 17B-1-304(2) and (3); or

70 (B) for an appointment to fill a midterm vacancy, Subsections 20A-1-512(1)(a) and

71 (b);

72 (ii) no qualified candidate timely files to be considered for appointment to the local
73 district board; and

74 (iii) the county legislative body appoints a member of the body to the local district
75 board, in accordance with Subsection 17B-1-304(6) or Subsection 20A-1-512(1)(c), who was:

76 (A) elected at large by the voters of the county;

77 (B) elected from a division of the county that includes more than 50% of the
78 geographic area of the local district; or

79 (C) if the local district is divided into divisions under Section 17B-1-306.5, elected
80 from a division of the county that includes more than 50% of the geographic area of the
81 division of the local district in which there is a board vacancy.

82 (4) (a) Except as otherwise provided by statute, the number of members of each board
83 of trustees of a local district that has nine or fewer members shall ~~[be]~~ have an odd number of
84 members that is no ~~[less]~~ fewer than three.

85 (b) If a board of trustees of a local district has more than nine members, the number of

86 members may be odd or even.

87 (5) For a newly created local district, the number of members of the initial board of
88 trustees shall be the number specified:

89 (a) for a local district whose creation was initiated by a petition under Subsection
90 17B-1-203(1)(a), (b), or (c), in the petition; or

91 (b) for a local district whose creation was initiated by a resolution under Subsection
92 17B-1-203(1)(d) or (e), in the resolution.

93 (6) (a) For an existing local district, the number of members of the board of trustees
94 may be changed by a two-thirds vote of the board of trustees.

95 (b) No change in the number of members of a board of trustees under Subsection (6)(a)
96 may:

97 (i) violate Subsection (4); or

98 (ii) serve to shorten the term of any member of the board.

99 Section 2. Section **17B-2a-404** is amended to read:

100 **17B-2a-404. Improvement district board of trustees.**

101 (1) As used in this section:

102 (a) "County district" means an improvement district that does not include within its
103 boundaries any territory of a municipality.

104 (b) "County member" means a member of a board of trustees of a county district.

105 (c) "Electric district" means an improvement district that was created for the purpose of
106 providing electric service.

107 (d) "Included municipality" means a municipality whose boundaries are entirely
108 contained within but do not coincide with the boundaries of an improvement district.

109 (e) "Municipal district" means an improvement district whose boundaries coincide
110 with the boundaries of a single municipality.

111 (f) "Regular district" means an improvement district that is not a county district,
112 electric district, or municipal district.

113 (g) "Remaining area" means the area of a regular district that:

114 (i) is outside the boundaries of an included municipality; and
115 (ii) includes the area of an included municipality whose legislative body elects, under
116 Subsection (5)(a)(ii), not to appoint a member to the board of trustees of the regular district.

117 (h) "Remaining area member" means a member of a board of trustees of a regular
118 district who is appointed, or, if applicable, elected to represent the remaining area of the
119 district.

120 (2) The legislative body of the municipality included within a municipal district may:

121 (a) elect, at the time of the creation of the district, to be the board of trustees of the
122 district; and

123 (b) adopt at any time a resolution providing for:

124 (i) the election of board of trustees members, as provided in Section 17B-1-306; or

125 (ii) the appointment of board of trustees members, as provided in Section 17B-1-304.

126 (3) (a) The legislative body of a county whose unincorporated area is partly or
127 completely within a county district may:

128 (i) elect, at the time of the creation of the district, to be the board of trustees of the
129 district, even though a member of the legislative body of the county may not meet the
130 requirements of Subsection 17B-1-302(1);

131 (ii) adopt at any time a resolution providing for:

132 (A) the election of board of trustees members, as provided in Section 17B-1-306; or

133 (B) except as provided in Subsection (4), the appointment of board of trustees
134 members, as provided in Section 17B-1-304; and

135 (iii) if the conditions of Subsection (3)(b) are met, appoint a member of the legislative
136 body of the county to the board of trustees, except that the legislative body of the county may
137 not appoint more than three members of the legislative body of the county to the board of
138 trustees.

139 (b) A legislative body of a county whose unincorporated area is partly or completely
140 within a county district may take an action under Subsection (3)(a)(iii) if:

141 (i) more than 35% of the residences within a county district that receive service from

142 the district are seasonally occupied homes, as defined in Subsection 17B-1-302(2)(a)(ii);

143 (ii) the board of trustees are appointed by the legislative body of the county; and

144 (iii) there are at least two appointed board members who meet the requirements of
145 Subsections 17B-1-302(1), (2), and (3), except that a member of the legislative body of the
146 county need not satisfy the requirements of Subsections 17B-1-302(1), (2), and (3).

147 (4) Subject to Subsection (6)(d), the legislative body of a county may not adopt a
148 resolution providing for the appointment of board of trustees members as provided in
149 Subsection (3)(a)(ii)(B) at any time after the county district is governed by an elected board of
150 trustees unless:

151 (a) the elected board has ceased to function;

152 (b) the terms of all of the elected board members have expired without the board
153 having called an election; or

154 (c) the elected board of trustees unanimously adopts a resolution approving the change
155 from an elected to an appointed board.

156 (5) (a) (i) Except as provided in Subsection (5)(a)(ii), the legislative body of each
157 included municipality shall each appoint one member to the board of trustees of a regular
158 district.

159 (ii) The legislative body of an included municipality may elect not to appoint a member
160 to the board under Subsection (5)(a)(i).

161 (b) Except as provided in Subsection (6), the legislative body of each county whose
162 boundaries include a remaining area shall appoint all other members to the board of trustees of
163 a regular district.

164 (6) Notwithstanding Subsection (3), each remaining area member of a regular district
165 and each county member of a county district shall be elected, as provided in Section
166 17B-1-306, if:

167 (a) the petition or resolution initiating the creation of the district provides for remaining
168 area or county members to be elected;

169 (b) the district holds an election to approve the district's issuance of bonds;

170 (c) for a regular district, an included municipality elects, under Subsection (5)(a)(ii),
171 not to appoint a member to the board of trustees; or

172 (d) (i) at least 90 days before the municipal general election or regular general election,
173 as applicable, a petition is filed with the district's board of trustees requesting remaining area
174 members or county members, as the case may be, to be elected; and

175 (ii) the petition is signed by registered voters within the remaining area or county
176 district, as the case may be, equal in number to at least 10% of the number of registered voters
177 within the remaining area or county district, respectively, who voted in the last gubernatorial
178 election.

179 (7) Subject to Section 17B-1-302, the number of members of a board of trustees of a
180 regular district shall be:

181 (a) the number of included municipalities within the district, if:

182 (i) the number of included municipalities is greater than nine or is an odd number that
183 is not greater than nine; and

184 (ii) the district does not include a remaining area;

185 (b) the number of included municipalities plus one, if the number of included
186 municipalities within the district is an even number that is less than nine; and

187 (c) the number of included municipalities plus two, if:

188 (i) the number of included municipalities is an odd number that is less than nine; and

189 (ii) the district includes a remaining area.

190 (8) (a) Except as provided in Subsection (8)(b), each remaining area member of the
191 board of trustees of a regular district shall reside within the remaining area.

192 (b) Notwithstanding Subsection (8)(a) and subject to Subsection (8)(c), each remaining
193 area member shall be chosen from the district at large if:

194 (i) the population of the remaining area is less than 5% of the total district population;

195 or

196 (ii) (A) the population of the remaining area is less than 50% of the total district
197 population; and

198 (B) the majority of the members of the board of trustees are remaining area members.

199 (c) Application of Subsection (8)(b) may not prematurely shorten the term of any
200 remaining area member serving the remaining area member's elected or appointed term on May
201 11, 2010.

202 (9) If the election of remaining area or county members of the board of trustees is
203 required because of a bond election, as provided in Subsection (6)(b):

204 (a) a person may file a declaration of candidacy if:

205 (i) the person resides within:

206 (A) the remaining area, for a regular district; or

207 (B) the county district, for a county district; and

208 (ii) otherwise qualifies as a candidate;

209 (b) the board of trustees shall, if required, provide a ballot separate from the bond
210 election ballot, containing the names of candidates and blanks in which a voter may write
211 additional names; and

212 (c) the election shall otherwise be governed by Title 20A, Election Code.

213 (10) (a) (i) This Subsection (10) applies to the board of trustees members of an electric
214 district.

215 (ii) Subsections (2) through (9) do not apply to an electric district.

216 (b) The legislative body of the county in which an electric district is located may
217 appoint the initial board of trustees of the electric district as provided in Section [17B-1-304](#).

218 (c) After the initial board of trustees is appointed as provided in Subsection (10)(b),
219 each member of the board of trustees of an electric district shall be elected by persons using
220 electricity from and within the district.

221 (d) Each member of the board of trustees of an electric district shall be a user of
222 electricity from the district and, if applicable, the division of the district from which elected.

223 (e) The board of trustees of an electric district may be elected from geographic
224 divisions within the district.

225 (f) A municipality within an electric district is not entitled to automatic representation

226 on the board of trustees.

227 Section 3. Section **17B-2a-604** is amended to read:

228 **17B-2a-604. Metropolitan water district board of trustees.**

229 (1) Members of the board of trustees of a metropolitan water district shall be:

230 (a) elected in accordance with:

231 (i) the petition or resolution that initiated the process of creating the metropolitan water
232 district; and

233 (ii) Section **17B-1-306**;

234 (b) appointed in accordance with Subsection (2); or

235 (c) elected under Subsection (3)(a).

236 (2) (a) This Subsection (2) shall apply to an appointed board of trustees of a
237 metropolitan water district.

238 (b) If a district contains the area of a single municipality:

239 (i) the legislative body of that municipality shall appoint each member of the board of
240 trustees; and

241 (ii) one member shall be the officer with responsibility over the municipality's water
242 supply and distribution system, if the system is municipally owned.

243 (c) If a district contains some or all of the retail water service area of more than one
244 municipality:

245 (i) the legislative body of each municipality shall appoint the number of members for
246 that municipality as determined under Subsection (2)(c)(ii);

247 (ii) subject to Subsection (2)(c)(iii), the number of members appointed by each
248 municipality shall be determined:

249 (A) by agreement between the metropolitan water district and the municipalities,
250 subject to [~~the maximum stated in~~] Subsection **17B-1-302**(4); or

251 (B) as provided in Chapter 1, Part 3, Board of Trustees; and

252 (iii) at least one member shall be appointed by each municipality.

253 (d) Each trustee shall be appointed without regard to partisan political affiliations from

254 among citizens of the highest integrity, attainment, competence, and standing in the
255 community.

256 (3) (a) Members of the board of trustees of a metropolitan water district shall be
257 elected in accordance with Section 17B-1-306, if, subject to Subsection (3)(b):

258 (i) three-fourths of all members of the board of trustees of the metropolitan water
259 district vote in favor of changing to an elected board; and

260 (ii) the legislative body of each municipality that appoints a member to the board of
261 trustees adopts a resolution approving the change to an elected board.

262 (b) A change to an elected board of trustees under Subsection (3)(a) may not shorten
263 the term of any member of the board of trustees serving at the time of the change.

264 (4) A member of the board of trustees of a metropolitan water district shall be:

265 (a) a registered voter;

266 (b) a property taxpayer; and

267 (c) a resident of:

268 (i) the metropolitan water district; and

269 (ii) the retail water service area of the municipality that:

270 (A) elects the member; or

271 (B) the member is appointed to represent.

272 (5) (a) Except as provided in Subsection (7), a member shall immediately forfeit the
273 member's seat on the board of trustees if the member becomes elected or appointed to office in
274 or becomes an employee of the municipality whose legislative body appointed the member
275 under Subsection (2).

276 (b) The position of the member described in Subsection (5)(a) is vacant until filled as
277 provided in Section 17B-1-304.

278 (6) Except as provided in Subsection (7), the term of office of each member of the
279 board of trustees is as provided in Section 17B-1-303.

280 (7) Subsections (4), (5)(a), and (6) do not apply to a member who is a member under
281 Subsection (2)(b)(ii).

282 Section 4. Section **17B-2a-905** is amended to read:

283 **17B-2a-905. Service area board of trustees.**

284 (1) (a) Except as provided in Subsection (2) or (3):

285 (i) the initial board of trustees of a service area located entirely within the
286 unincorporated area of a single county may, as stated in the petition or resolution that initiated
287 the process of creating the service area:

288 (A) consist of the county legislative body;

289 (B) be appointed, as provided in Section **17B-1-304**; or

290 (C) be elected, as provided in Section **17B-1-306**;

291 (ii) if the board of trustees of a service area consists of the county legislative body, the
292 board may adopt a resolution providing for future board members to be appointed, as provided
293 in Section **17B-1-304**, or elected, as provided in Section **17B-1-306**; and

294 (iii) members of the board of trustees of a service area shall be elected, as provided in
295 Section **17B-1-306**, if:

296 (A) the service area is not entirely within the unincorporated area of a single county;

297 (B) a petition is filed with the board of trustees requesting that board members be
298 elected, and the petition is signed by registered voters within the service area equal in number
299 to at least 10% of the number of registered voters within the service area who voted at the last
300 gubernatorial election; or

301 (C) an election is held to authorize the service area's issuance of bonds.

302 (b) If members of the board of trustees of a service area are required to be elected
303 under Subsection (1)(a)(iii)(C) because of a bond election:

304 (i) board members shall be elected in conjunction with the bond election;

305 (ii) the board of trustees shall:

306 (A) establish a process to enable potential candidates to file a declaration of candidacy
307 sufficiently in advance of the election; and

308 (B) provide a ballot for the election of board members separate from the bond ballot;

309 and

310 (iii) except as provided in this Subsection (1)(b), the election shall be held as provided
311 in Section 17B-1-306.

312 (2) (a) This Subsection (2) applies to a service area created on or after May 5, 2003, if:

313 (i) the service area was created to provide:

314 (A) fire protection, paramedic, and emergency services; or

315 (B) law enforcement service;

316 (ii) in the creation of the service area, an election was not required under Subsection
317 17B-1-214(3)(d); and

318 (iii) the service area is not a service area described in Subsection (3).

319 (b) (i) Each county [~~whose~~] with unincorporated area that is included within a service
320 area described in Subsection (2)(a), whether in conjunction with the creation of the service area
321 or by later annexation, shall appoint up to three members to the board of trustees.

322 (ii) Each municipality [~~whose~~] with an area that is included within a service area
323 described in Subsection (2)(a), whether in conjunction with the creation of the service area or
324 by later service area annexation or municipal incorporation or annexation, shall appoint one
325 member to the board of trustees, unless the area of the municipality is withdrawn from the
326 service area.

327 (iii) Each member [~~appointed by~~] that a county or municipality appoints under
328 Subsection (2)(b)(i) or (ii) shall be an elected official of the appointing county or municipality,
329 respectively.

330 (c) Notwithstanding Subsection 17B-1-302(4), the number of members of a board of
331 trustees of a service area described in Subsection (2)(a) shall be the number resulting from
332 application of Subsection (2)(b).

333 (3) (a) This Subsection (3) applies to a service area created on or after May 14, 2013,
334 if:

335 (i) the service area was created to provide fire protection, paramedic, and emergency
336 services;

337 (ii) in the creation of the service area, an election was not required under Subsection

338 17B-1-214(3)(d); and

339 (iii) each municipality [~~whose~~] with an area that is included within the service area or
340 county [~~whose~~] with unincorporated area, whether in whole or in part, that is included within a
341 service area is a party to an agreement:

342 (A) entered into in accordance with Title 11, Chapter 13, Interlocal Cooperation Act,
343 with all the other municipalities or counties [~~whose~~] with an area that is included in the service
344 area;

345 (B) to provide the services described in Subsection (3)(a)(i); and

346 (C) at the time a resolution proposing the creation of the service area is adopted by
347 each applicable municipal or county legislative body in accordance with Subsection
348 17B-1-203(1)(d).

349 (b) (i) Each county [~~whose~~] with unincorporated area, whether in whole or in part, that
350 is included within a service area described in Subsection (3)(a), whether in conjunction with
351 the creation of the service area or by later annexation, shall appoint one member to the board of
352 trustees.

353 (ii) Each municipality [~~whose~~] with an area that is included within a service area
354 described in Subsection (3)(a), whether in conjunction with the creation of the service area or
355 by later annexation, shall appoint one member to the board of trustees.

356 (iii) Each member [~~appointed by~~] that a county or municipality appoints under
357 Subsection (3)(b)(i) or (ii) shall be an elected official of the appointing county or municipality,
358 respectively.

359 (iv) A vote by a member of the board of trustees may be weighted or proportional.

360 (c) Notwithstanding Subsection 17B-1-302(4), the number of members of a board of
361 trustees of a service area described in Subsection (3)(a) [~~shall be~~] is the number resulting from
362 the application of Subsection (3)(b).

363 Section 5. Section 17B-2a-1106 is amended to read:

364 **17B-2a-1106. Municipal services district board of trustees -- Governance.**

365 (1) Except as provided in Subsection (2), and notwithstanding any other provision of

366 law regarding the membership of a local district board of trustees, the initial board of trustees
367 of a municipal services district shall consist of the county legislative body.

368 (2) (a) Notwithstanding any provision of law regarding the membership of a local
369 district board of trustees or the governance of a local district, and, except as provided in
370 Subsection (3), if a municipal services district is created in a county of the first class with the
371 county executive-council form of government, the initial governance of the municipal services
372 district is as follows:

373 (i) subject to Subsection (2)(b), the county council is the municipal services district
374 board of trustees; and

375 (ii) subject to Subsection (2)(c), the county executive is the executive of the municipal
376 services district.

377 (b) Notwithstanding any other provision of law, the board of trustees of a municipal
378 services district described in Subsection (2)(a) shall:

379 (i) act as the legislative body of the district; and

380 (ii) exercise legislative branch powers and responsibilities established for county
381 legislative bodies in:

382 (A) Title 17, Counties; and

383 (B) an optional plan, as defined in Section 17-52-101, adopted for a county
384 executive-council form of county government as described in Section 17-52-504.

385 (c) Notwithstanding any other provision of law, in a municipal services district
386 described in Subsection (2)(a), the executive of the district shall:

387 (i) act as the executive of the district;

388 (ii) nominate a general manager of the municipal services district, subject to the advice
389 and consent of the board of trustees; and

390 (iii) exercise executive branch powers and responsibilities established for a county
391 executive in:

392 (A) Title 17, Counties; and

393 (B) an optional plan, as defined in Section 17-52-101, adopted for a county

394 executive-council form of county government as described in Section 17-52-504.

395 (3) (a) If, after the initial creation of a municipal services district, an area within the
 396 district is incorporated as a municipality as defined in Section 10-1-104 and the area is not
 397 withdrawn from the district in accordance with Section 17B-1-502 or 17B-1-505, or an area
 398 within the municipality is annexed into the municipal services district in accordance with
 399 Section 17B-2a-1103, the district's board of trustees shall be as follows:

400 (i) subject to Subsection (3)(b), a member of that municipality's governing body;

401 (ii) ~~[subject to Subsection (4), two members]~~ one member of the county council of the
 402 county in which the municipal services district is located; and

403 (iii) the total number of board members ~~[shall]~~ is not required to be an odd number.

404 (b) A member described in Subsection (3)(a)(i) shall be:

405 (i) for a municipality other than a metro township, designated by the municipal
 406 legislative body; and

407 (ii) for a metro township, the chair of the metro township.

408 (c) A member of the board of trustees has the powers and duties described in
 409 Subsection (2)(b).

410 (d) The county executive is the executive and has the powers and duties as described in
 411 Subsection (2)(c).

412 ~~[(4) (a) The number of county council members may be increased or decreased to meet
 413 the membership requirements of Subsection (3)(a)(iii) but may not be less than one.]~~

414 ~~[(b)]~~ (4) The ~~[number of]~~ county council ~~[members]~~ member described in Subsection
 415 (3)(a)(ii) ~~[does]~~ may not [include] be the county mayor who, as the executive of the district, is
 416 not a member of the board of trustees.

417 (5) For a board of trustees described in Subsection (3), each board member's vote is
 418 weighted using the proportion of the municipal services district population that resides:

419 (a) for each member described in Subsection (3)(a)(i), within that member's
 420 municipality; and

421 (b) for ~~[each]~~ the member described in Subsection (3)(a)(ii), within the unincorporated

422 county[, with the members' weighted vote divided evenly if there is more than one member on
423 the board described in Subsection (3)(a)(ii)].

424 (6) The board may adopt a resolution providing for future board members to be
425 appointed, as provided in Section 17B-1-304, or elected, as provided in Section 17B-1-306.

426 (7) (a) Notwithstanding Subsections 17B-1-309(1) or 17B-1-310(1), the board of
427 trustees may adopt a resolution to determine the internal governance of the board.

428 (b) A resolution adopted under Subsection (7)(a) may not alter or impair the board of
429 trustees' duties, powers, or responsibilities described in Subsection (2)(b) or the executive's
430 duties, powers, or responsibilities described in Subsection (2)(c).

431 (8) The municipal services district and the county may enter into an agreement for the
432 provision of legal services to the municipal services district.