

HB0066S01 compared with HB0066

~~text~~ shows text that was in HB0066 but was deleted in HB0066S01.

Inserted text shows text that was not in HB0066 but was inserted into HB0066S01.

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Representative Stephen G. Handy proposes the following substitute bill:

LOCAL GOVERNMENT MODIFICATIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

HB0066S01 compared with HB0066

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

(i) the boundaries of the local district; and

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

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

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

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

(A) that is located within the local district;

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

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

(b) If over 50% of the residences within a local district that receive service from the local district are seasonally occupied homes, the requirement under Subsection (1)(b) is

HB0066S01 compared with HB0066

replaced, for a proportional number of members of the board of trustees, with the requirement that the member be an owner of land, or an agent or officer of the owner of land, that:

- (i) receives service from the district; and
- (ii) is located within the local district and, if applicable, the division from which the member is elected.

(3) (a) For a board of trustees member in a basic local district that has within the district's boundaries fewer than one residential dwelling unit per 10 acres of land, the requirement under Subsection (1)(b) is replaced with the requirement that the member be an owner of land within the local district that receives service from the district, or an agent or officer of the owner.

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

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

(i) the county legislative body satisfies the procedures to fill a vacancy described in:
(A) for the appointment of a new board member, Subsections 17B-1-304(2) and (3); or
(B) for an appointment to fill a midterm vacancy, Subsections 20A-1-512(1)(a) and (b);

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

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

(A) elected at large by the voters of the county;
(B) elected from a division of the county that includes more than 50% of the geographic area of the local district; or

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

HB0066S01 compared with HB0066

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

(b) If a board of trustees of a local district has more than nine members, the number of members may be odd or even.

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

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

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

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

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

(i) violate Subsection (4); or

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

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

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

(1) As used in this section:

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

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

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

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

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

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

HB0066S01 compared with HB0066

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

(i) is outside the boundaries of an included municipality; and

(ii) includes the area of an included municipality whose legislative body elects, under Subsection (5)(a)(ii), not to appoint a member to the board of trustees of the regular district.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) more than 35% of the residences within a county district that receive service from the district are seasonally occupied homes, as defined in Subsection 17B-1-302(2)(a)(ii);

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

HB0066S01 compared with HB0066

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

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

(a) the elected board has ceased to function;

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

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

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

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

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

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

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

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

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

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

HB0066S01 compared with HB0066

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

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

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

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

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

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

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

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

(ii) the district includes a remaining area.

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

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

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

or

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

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

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

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

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

(i) the person resides within:

HB0066S01 compared with HB0066

- (A) the remaining area, for a regular district; or
- (B) the county district, for a county district; and
- (ii) otherwise qualifies as a candidate;
- (b) the board of trustees shall, if required, provide a ballot separate from the bond election ballot, containing the names of candidates and blanks in which a voter may write additional names; and
- (c) the election shall otherwise be governed by Title 20A, Election Code.
- (10) (a) (i) This Subsection (10) applies to the board of trustees members of an electric district.
- (ii) Subsections (2) through (9) do not apply to an electric district.
- (b) The legislative body of the county in which an electric district is located may appoint the initial board of trustees of the electric district as provided in Section 17B-1-304.
- (c) After the initial board of trustees is appointed as provided in Subsection (10)(b), each member of the board of trustees of an electric district shall be elected by persons using electricity from and within the district.
- (d) Each member of the board of trustees of an electric district shall be a user of electricity from the district and, if applicable, the division of the district from which elected.
- (e) The board of trustees of an electric district may be elected from geographic divisions within the district.
- (f) A municipality within an electric district is not entitled to automatic representation on the board of trustees.

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

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

- (1) Members of the board of trustees of a metropolitan water district shall be:
 - (a) elected in accordance with:
 - (i) the petition or resolution that initiated the process of creating the metropolitan water district; and
 - (ii) Section 17B-1-306;
 - (b) appointed in accordance with Subsection (2); or
 - (c) elected under Subsection (3)(a).
 - (2) (a) This Subsection (2) shall apply to an appointed board of trustees of a

HB0066S01 compared with HB0066

metropolitan water district.

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

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

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

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

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

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

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

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

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

(d) Each trustee shall be appointed without regard to partisan political affiliations from among citizens of the highest integrity, attainment, competence, and standing in the community.

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

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

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

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

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

(a) a registered voter;

(b) a property taxpayer; and

(c) a resident of:

HB0066S01 compared with HB0066

- (i) the metropolitan water district; and
- (ii) the retail water service area of the municipality that:
 - (A) elects the member; or
 - (B) the member is appointed to represent.

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

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

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

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

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

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

- (1) (a) Except as provided in Subsection (2) or (3):
 - (i) the initial board of trustees of a service area located entirely within the unincorporated area of a single county may, as stated in the petition or resolution that initiated the process of creating the service area:
 - (A) consist of the county legislative body;
 - (B) be appointed, as provided in Section 17B-1-304; or
 - (C) be elected, as provided in Section 17B-1-306;
 - (ii) if the board of trustees of a service area consists of the county legislative body, the board may adopt a resolution providing for future board members to be appointed, as provided in Section 17B-1-304, or elected, as provided in Section 17B-1-306; and
 - (iii) members of the board of trustees of a service area shall be elected, as provided in Section 17B-1-306, if:
 - (A) the service area is not entirely within the unincorporated area of a single county;
 - (B) a petition is filed with the board of trustees requesting that board members be elected, and the petition is signed by registered voters within the service area equal in number

HB0066S01 compared with HB0066

to at least 10% of the number of registered voters within the service area who voted at the last gubernatorial election; or

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

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

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

(ii) the board of trustees shall:

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

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

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

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

(i) the service area was created to provide:

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

(B) law enforcement service;

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

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

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

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

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

HB0066S01 compared with HB0066

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

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

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

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

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

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

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

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

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

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

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

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

(c) Notwithstanding Subsection 17B-1-302(4), the number of members of a board of

HB0066S01 compared with HB0066

trustees of a service area described in Subsection (3)(a) ~~shall be~~ is the number resulting from the application of Subsection (3)(b).

Section ~~4~~ 5. Section **17B-2a-1106** is amended to read:

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

(1) Except as provided in Subsection (2), and notwithstanding any other provision of law regarding the membership of a local district board of trustees, the initial board of trustees of a municipal services district shall consist of the county legislative body.

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

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

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

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

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

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

(A) Title 17, Counties; and

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

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

(i) act as the executive of the district;

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

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

HB0066S01 compared with HB0066

(A) Title 17, Counties; and

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

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

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

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

(iii) ~~except as provided in Subsection 17B-1-302(2),~~ the total number of board members ~~shall~~ is not required to be an odd number.

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

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

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

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

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

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

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

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

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

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

HB0066S01 compared with HB0066

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

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

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

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

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

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~~Legislative Review Note~~

~~Office of Legislative Research and General Counsel†~~