

1 **LOCAL DISTRICT SERVICE AMENDMENTS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: J. Stuart Adams**

5 House Sponsor: Michael T. Morley

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts language related to a service provided by a local district.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ authorizes a local district to require that a service applicant provide:
 - 14 • an improvement;
 - 15 • an improvement assurance; and
 - 16 • an improvement assurance warranty;
- 17 ▶ requires a local district to determine whether a completed improvement meets
- 18 certain standards;
- 19 ▶ prohibits a claim for money damages;
- 20 ▶ authorizes a local district to impose an exaction;
- 21 ▶ requires that a local district reconvey surplus real property in certain circumstances;
- 22 ▶ prohibits a local district from imposing or collecting certain fees;
- 23 ▶ requires that a local district establish a fee appeal process; and
- 24 ▶ makes technical corrections.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **17B-1-102**, as last amended by Laws of Utah 2010, Chapter 254

32 **17D-1-106**, as last amended by Laws of Utah 2009, Chapters 181 and 356

33 ENACTS:

34 **17B-1-119**, Utah Code Annotated 1953

35 **17B-1-120**, Utah Code Annotated 1953

36 **17B-1-121**, Utah Code Annotated 1953

37

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

39 Section 1. Section **17B-1-102** is amended to read:

40 **17B-1-102. Definitions.**

41 As used in this title:

42 (1) "Appointing authority" means the person or body authorized to make an
43 appointment to the board of trustees.

44 (2) "Basic local district":

45 (a) means a local district that is not a specialized local district; and

46 (b) includes an entity that was, under the law in effect before April 30, 2007, created
47 and operated as a local district, as defined under the law in effect before April 30, 2007.

48 (3) "Bond" means:

49 (a) a written obligation to repay borrowed money, whether denominated a bond, note,
50 warrant, certificate of indebtedness, or otherwise; and

51 (b) a lease agreement, installment purchase agreement, or other agreement that:

52 (i) includes an obligation by the district to pay money; and

53 (ii) the district's board of trustees, in its discretion, treats as a bond for purposes of Title
54 11, Chapter 14, Local Government Bonding Act, or Title 11, Chapter 27, Utah Refunding Bond
55 Act.

56 (4) "Cemetery maintenance district" means a local district that operates under and is
57 subject to the provisions of this chapter and Chapter 2a, Part 1, Cemetery Maintenance District

58 Act, including an entity that was created and operated as a cemetery maintenance district under
59 the law in effect before April 30, 2007.

60 (5) "Drainage district" means a local district that operates under and is subject to the
61 provisions of this chapter and Chapter 2a, Part 2, Drainage District Act, including an entity that
62 was created and operated as a drainage district under the law in effect before April 30, 2007.

63 (6) "Facility" or "facilities" includes any structure, building, system, land, water right,
64 water, or other real or personal property required to provide a service that a local district is
65 authorized to provide, including any related or appurtenant easement or right-of-way,
66 improvement, utility, landscaping, sidewalk, road, curb, gutter, equipment, or furnishing.

67 (7) "Fire protection district" means a local district that operates under and is subject to
68 the provisions of this chapter and Chapter 2a, Part 3, Fire Protection District Act, including an
69 entity that was created and operated as a fire protection district under the law in effect before
70 April 30, 2007.

71 (8) "General obligation bond":

72 (a) means a bond that is directly payable from and secured by ad valorem property
73 taxes that are:

74 (i) levied:

75 (A) by the district that issues the bond; and

76 (B) on taxable property within the district; and

77 (ii) in excess of the ad valorem property taxes of the district for the current fiscal year;

78 and

79 (b) does not include:

80 (i) a short-term bond;

81 (ii) a tax and revenue anticipation bond; or

82 (iii) a special assessment bond.

83 (9) "Improvement assurance" means a surety bond, letter of credit, cash, or other
84 security:

85 (a) to guarantee the proper completion of an improvement;

86 (b) that is required before a local district may provide a service requested by a service
87 applicant; and

88 (c) that is offered to a local district to induce the local district before construction of an
89 improvement begins to:

90 (i) provide the requested service; or

91 (ii) commit to provide the requested service.

92 (10) "Improvement assurance warranty" means a promise that the materials and
93 workmanship of an improvement:

94 (a) comply with standards adopted by a local district; and

95 (b) will not fail in any material respect within an agreed warranty period.

96 ~~[(9)]~~ (11) "Improvement district" means a local district that operates under and is
97 subject to the provisions of this chapter and Chapter 2a, Part 4, Improvement District Act,
98 including an entity that was created and operated as a county improvement district under the
99 law in effect before April 30, 2007.

100 ~~[(10)]~~ (12) "Irrigation district" means a local district that operates under and is subject
101 to the provisions of this chapter and Chapter 2a, Part 5, Irrigation District Act, including an
102 entity that was created and operated as an irrigation district under the law in effect before April
103 30, 2007.

104 ~~[(11)]~~ (13) "Local district" means a limited purpose local government entity, as
105 described in Section 17B-1-103, that operates under, is subject to, and has the powers set forth
106 in:

107 (a) this chapter; or

108 (b) (i) this chapter; and

109 (ii) (A) Chapter 2a, Part 1, Cemetery Maintenance District Act;

110 (B) Chapter 2a, Part 2, Drainage District Act;

111 (C) Chapter 2a, Part 3, Fire Protection District Act;

112 (D) Chapter 2a, Part 4, Improvement District Act;

113 (E) Chapter 2a, Part 5, Irrigation District Act;

- 114 (F) Chapter 2a, Part 6, Metropolitan Water District Act;
- 115 (G) Chapter 2a, Part 7, Mosquito Abatement District Act;
- 116 (H) Chapter 2a, Part 8, Public Transit District Act;
- 117 (I) Chapter 2a, Part 9, Service Area Act; or
- 118 (J) Chapter 2a, Part 10, Water Conservancy District Act.

119 ~~[(12)]~~ (14) "Metropolitan water district" means a local district that operates under and
120 is subject to the provisions of this chapter and Chapter 2a, Part 6, Metropolitan Water District
121 Act, including an entity that was created and operated as a metropolitan water district under the
122 law in effect before April 30, 2007.

123 ~~[(13)]~~ (15) "Mosquito abatement district" means a local district that operates under and
124 is subject to the provisions of this chapter and Chapter 2a, Part 7, Mosquito Abatement District
125 Act, including an entity that was created and operated as a mosquito abatement district under
126 the law in effect before April 30, 2007.

127 ~~[(14)]~~ (16) "Municipal" means of or relating to a municipality.

128 ~~[(15)]~~ (17) "Municipality" means a city or town.

129 (18) "Person" means an individual, corporation, partnership, organization, association,
130 trust, governmental agency, or other legal entity.

131 ~~[(16)]~~ (19) "Political subdivision" means a county, city, town, local district under this
132 title, special service district under Title 17D, Chapter 1, Special Service District Act, an entity
133 created by interlocal cooperation agreement under Title 11, Chapter 13, Interlocal Cooperation
134 Act, or any other governmental entity designated in statute as a political subdivision of the
135 state.

136 ~~[(17)]~~ (20) "Private," with respect to real property, means not owned by the United
137 States or any agency of the federal government, the state, a county, or a political subdivision.

138 ~~[(18)]~~ (21) "Public entity" means:

- 139 (a) the United States or an agency of the United States;
- 140 (b) the state or an agency of the state;
- 141 (c) a political subdivision of the state or an agency of a political subdivision of the

142 state;

143 (d) another state or an agency of that state; or

144 (e) a political subdivision of another state or an agency of that political subdivision.

145 ~~[(19)]~~ (22) "Public transit district" means a local district that operates under and is
146 subject to the provisions of this chapter and Chapter 2a, Part 8, Public Transit District Act,
147 including an entity that was created and operated as a public transit district under the law in
148 effect before April 30, 2007.

149 ~~[(20)]~~ (23) "Revenue bond":

150 (a) means a bond payable from designated taxes or other revenues other than the local
151 district's ad valorem property taxes; and

152 (b) does not include:

153 (i) an obligation constituting an indebtedness within the meaning of an applicable
154 constitutional or statutory debt limit;

155 (ii) a tax and revenue anticipation bond; or

156 (iii) a special assessment bond.

157 (24) "Service applicant" means a person who requests that a local district provide a
158 service that the local district is authorized to provide.

159 ~~[(21)]~~ (25) "Service area" means a local district that operates under and is subject to the
160 provisions of this chapter and Chapter 2a, Part 9, Service Area Act, including an entity that was
161 created and operated as a county service area or a regional service area under the law in effect
162 before April 30, 2007.

163 ~~[(22)]~~ (26) "Short-term bond" means a bond that is required to be repaid during the
164 fiscal year in which the bond is issued.

165 ~~[(23)]~~ (27) "Special assessment" means an assessment levied against property to pay all
166 or a portion of the costs of making improvements that benefit the property.

167 ~~[(24)]~~ (28) "Special assessment bond" means a bond payable from special assessments.

168 ~~[(25)]~~ (29) "Specialized local district" means a local district that is a cemetery
169 maintenance district, a drainage district, a fire protection district, an improvement district, an

170 irrigation district, a metropolitan water district, a mosquito abatement district, a public transit
171 district, a service area, or a water conservancy district.

172 ~~[(26)]~~ (30) "Taxable value" means the taxable value of property as computed from the
173 most recent equalized assessment roll for county purposes.

174 ~~[(27)]~~ (31) "Tax and revenue anticipation bond" means a bond:

175 (a) issued in anticipation of the collection of taxes or other revenues or a combination
176 of taxes and other revenues; and

177 (b) that matures within the same fiscal year as the fiscal year in which the bond is
178 issued.

179 ~~[(28)]~~ (32) "Unincorporated" means not included within a municipality.

180 ~~[(29)]~~ (33) "Water conservancy district" means a local district that operates under and
181 is subject to the provisions of this chapter and Chapter 2a, Part 10, Water Conservancy District
182 Act, including an entity that was created and operated as a water conservancy district under the
183 law in effect before April 30, 2007.

184 ~~[(30)]~~ (34) "Works" includes a dam, reservoir, well, canal, conduit, pipeline, drain,
185 tunnel, power plant, and any facility, improvement, or property necessary or convenient for
186 supplying or treating water for any beneficial use, and for otherwise accomplishing the
187 purposes of a local district.

188 Section 2. Section 17B-1-119 is enacted to read:

189 **17B-1-119. Service provided -- Requirements -- Reasonable diligence required for**
190 **determination of whether improvements or warranty work meets standards -- Money**
191 **damages prohibited.**

192 (1) (a) A service applicant may request that a local district provide a service, subject to
193 Subsection (1)(b).

194 (b) If a service applicant requests that a local district provide a service, the local district
195 may, before committing to provide the service, require that the service applicant:

196 (i) (A) provide one or more improvements; and

197 (B) provide that an improvement meet any reasonable and roughly proportionate

198 conditions and reasonable standards imposed by the local district; and
199 (ii) convey an improvement described in Subsection (1)(b)(i)(A) to the local district.
200 (2) If a local district requires a service applicant to convey an improvement to the local
201 district, the local district may require that the service applicant provide an improvement
202 assurance for the improvement.
203 (3) (a) If a local district requires an improvement assurance under Subsection (2), the
204 local district may:
205 (i) require that the improvement assurance include an improvement assurance warranty
206 for a period not to exceed:
207 (A) one year after the day on which the improvement is in service or one year after the
208 day on which warranty work is accepted by the local district; or
209 (B) subject to Subsection (3)(b), two years after the day on which the improvement is
210 in service or two years after the day on which the warranty work is accepted by the local
211 district;
212 (ii) require a partial release of the improvement assurance, if applicable; and
213 (iii) establish objective inspection standards that an improvement must comply with
214 before the local district, subject to Subsection (4), is required to accept the improvement.
215 (b) A local district may not request a warranty described in Subsection (3)(a)(i)(B)
216 unless the local district:
217 (i) determines that a lesser warranty period is inadequate to protect public health,
218 safety, and welfare; and
219 (ii) has substantial evidence of:
220 (A) the service applicant's prior poor performance;
221 (B) unstable soil conditions within the subdivision or development area; or
222 (C) extreme fluctuations in climate conditions that would render impracticable the
223 discovery of substandard or defective performance within the period described in Subsection
224 (3)(a)(i)(A).
225 (4) (a) If a service applicant notifies the local district that an improvement requested

226 under Subsection (3)(b)(i)(A) is complete, the local district shall, with reasonable diligence,
227 determine whether the improvement meets the standards described in Subsection (3)(a)(iii).

228 (b) (i) A service applicant may request in writing that the local district accept or reject:

229 (A) subject to Subsection (4)(b)(ii), the installed improvement; or

230 (B) subject to Subsection (4)(b)(iii), performance of the warranty work.

231 (ii) The local district shall accept or reject an improvement:

232 (A) no later than 15 days after the day on which the service applicant submits a written
233 request under Subsection (4)(b)(i); or

234 (B) within a reasonable period of time if an inspection of the installation is impeded by
235 weather conditions.

236 (iii) The local district shall accept or reject performance of the warranty work:

237 (A) no later than 45 days after the day on which the service applicant submits a written
238 request under Subsection (4)(b)(i); or

239 (B) within a reasonable period of time if an inspection of the warranty work is impeded
240 by weather conditions.

241 (c) If a local district rejects an improvement under Subsection (4)(b)(ii) or the warranty
242 work under Subsection (4)(b)(iii), the local district shall provide the service applicant a written
243 statement specifying why the local district rejected the improvement or warranty work.

244 (5) (a) This section does not relieve a service applicant of any requirement or duty to
245 comply with all applicable substantive rules or regulations.

246 (b) A local district's action or inaction under this section does not relieve a service
247 applicant of any requirement or duty to comply with all applicable substantive rules or
248 regulations.

249 (6) A person may not receive money damages for a claim arising under this section.

250 Section 3. Section **17B-1-120** is enacted to read:

251 **17B-1-120. Exactions -- Exaction for water interest -- Requirement to offer to**
252 **original owner property acquired by exaction.**

253 (1) A local district may impose an exaction on a service received by an applicant,

254 including, subject to Subsection (2), an exaction for a water interest if:

255 (a) the local district establishes that a legitimate local district interest makes the
256 exaction essential; and

257 (b) the exaction is roughly proportionate, both in nature and extent, to the impact of the
258 proposed service on the local district.

259 (2) (a) (i) A local district shall base an exaction for a water interest on the culinary
260 water authority's established calculations of projected water interest requirements.

261 (ii) If requested by a service applicant, the culinary authority shall provide the basis for
262 the culinary water authority's calculations described in Subsection (2)(a)(i).

263 (b) A local district may not impose an exaction for a water interest if the culinary water
264 authority's existing available water interests exceed the water interests needed to meet the
265 reasonable future water requirement of the public, as determined in accordance with Section
266 73-1-4.

267 (3) (a) If a local district plans to dispose of surplus real property that was acquired
268 under this section and has been owned by the local district for less than 15 years, the local
269 district shall offer to reconvey the surplus real property, without receiving additional
270 consideration, first to a person who granted the real property to the local district.

271 (b) The person described in Subsection (3)(a) shall, within 90 days after the day on
272 which a local district makes an offer under Subsection (3)(a), accept or reject the offer.

273 (c) If a person rejects an offer under Subsection (3)(b), the local district may sell the
274 real property.

275 Section 4. Section **17B-1-121** is enacted to read:

276 **17B-1-121. Limit on fees -- Requirement to itemize and account for fees --**

277 **Appeals.**

278 (1) A local district may not impose or collect:

279 (a) an application fee that exceeds the reasonable cost of processing the application; or

280 (b) an inspection or review fee that exceeds the reasonable cost of performing an
281 inspection or review.

282 (2) (a) Upon request by a service applicant who is charged a fee or an owner of
283 residential property upon which a fee is imposed, a local district shall provide a statement of
284 each itemized fee and calculation method for each fee.

285 (b) If an applicant who is charged a fee or an owner of residential property upon which
286 a fee is imposed submits a request for a statement of each itemized fee no later than 30 days
287 after the day on which the applicant or owner pays the fee, the local district shall, no later than
288 10 days after the day on which the request is received, provide or commit to provide within a
289 specific time:

290 (i) for each fee, any studies, reports, or methods relied upon by the local district to
291 create the calculation method described in Subsection (2)(a);

292 (ii) an accounting of each fee paid;

293 (iii) how each fee will be distributed by the local district; and

294 (iv) information on filing a fee appeal through the process described in Subsection
295 (2)(c).

296 (c) (i) A local district shall establish an impartial fee appeal process to determine
297 whether a fee reflects only the reasonable estimated cost of delivering the service for which the
298 fee was paid.

299 (ii) A party to a fee appeal described in Subsection (2)(c)(i) may petition for judicial
300 review of the local district's final decision.

301 (3) A local district may not impose on or collect from a public agency a fee associated
302 with the public agency's development of the public agency's land other than:

303 (a) subject to Subsection (1), a hookup fee; or

304 (b) an impact fee, as defined in Section 11-36-102 and subject to Section 11-36-202,
305 for a public facility listed in Subsection 11-36-102(13)(a), (b), (c), (d), (e), or (g).

306 Section 5. Section **17D-1-106** is amended to read:

307 **17D-1-106. Special service districts subject to other provisions.**

308 (1) A special service district is, to the same extent as if it were a local district, subject
309 to and governed by:

- 310 (a) Sections 17B-1-105, 17B-1-107, 17B-1-108, 17B-1-109, 17B-1-110, 17B-1-111,
311 17B-1-112, 17B-1-113, 17B-1-116, [~~and~~] 17B-1-118, 17B-1-119, 17B-1-120, and 17B-1-121;
312 (b) Sections 17B-1-304, 17B-1-305, 17B-1-306, 17B-1-307, 17B-1-310, 17B-1-312,
313 and 17B-1-313;
- 314 (c) Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts;
315 (d) Title 17B, Chapter 1, Part 7, Local District Budgets and Audit Reports;
316 (e) Title 17B, Chapter 1, Part 8, Local District Personnel Management; and
317 (f) Title 17B, Chapter 1, Part 9, Collection of Service Fees and Charges.
- 318 (2) For purposes of applying the provisions listed in Subsection (1) to a special service
319 district, each reference in those provisions to the local district board of trustees means the
320 governing body.