

**LEGISLATION DEALING WITH THE TAXING AUTHORITY
OF APPOINTED SERVICE AREA, WATER CONSERVANCY DISTRICT
AND METROPOLITAN WATER DISTRICT BOARDS**

EXECUTIVE SUMMARY

- Procedure to authorize a new tax or to exceed the certified tax rate applicable to appointed service area, water conservancy district and metropolitan water district boards.
 - Would not apply to elected boards (including an appointed trustee who holds, at the time of appointment, an elected position with an impacted unit of local government).
 - A midterm replacement of an elected trustee and an unopposed candidate who is appointed to the board to avoid holding an unnecessary election qualify as elected trustees.
 - Would not apply where a majority of the members of the board are elected and the board approves the property tax increase.
 - Would only apply if the Truth in Taxation process is triggered and would not apply to the extent that revenue from the tax is pledged to pay general obligation bonds.
- Front end options.
 - Voter approval.
 - Approval by appointing authority.
 - Approval by legislative body of impacted municipalities and counties.
- Limited referendum-back end option (applicable only if a front end option has not been utilized).
 - A public notice of the district's intent to exceed the certified tax rate would be required, including posting the notice on the state web page.
 - Patterned after the revenue bond referendum language of former Utah Code Ann. §§ 17A-2-1440 and -1441.
 - Petition required – signed by 15% of the qualified electors of the district (15% of the qualified electors in each county of a multi county district).
 - May be consolidated with the general election or municipal election, as appropriate, if feasible.
 - The procedures of Title 20A, Chapter 7, Part 6 “Local Referendum – Procedures” will generally be followed to verify the petition signatures and in conducting the election.
 - If not consolidated with a municipal or county general election, the entire district may be treated as a single voting district or be divided into a number of voting districts with specified polling places.
 - Would not be required if the cost of the election would exceed 1% of the district's operations and maintenance budget.

- Exclusions.
 - Would not apply to property taxes lawfully in existence on the effective date of the Act or to a tax that has already been approved as required above, but would apply to any subsequent tax increase above the certified rate.
 - Would not apply to “grandfathered” appointed board members serving on the effective date of the Act.
- A conversion procedure would allow a board having appointed members to transition to an elected board, including a moratorium for the time necessary to complete the conversion.

I. INCLUDED DISTRICTS

A. **District Types Covered.** Metropolitan Water Districts (Title 17B, Chapter 2a, Part 6), Service Areas (Title 17B, Chapter 2a, Part 9) and Conservancy Districts (Title 17B, Chapter 2a, Part 10) having appointed boards would be subject to the new law.

B. **No Application to Elected Boards.**

1. **Elected board member definition** – a trustee elected to the board by district voters or an appointed trustee who holds, at the time of appointment, an elected position with a unit of local government (excluding school districts) which is located wholly or partially within the boundaries of the local district (i.e. a mayor, city councilman, county commissioner or elected trustee of a “retail” local district that is served by the subject “wholesale” local district).
 - i. A midterm replacement of an elected trustee would also qualify as an elected trustee.
 - ii. An unopposed candidate appointed to the board to avoid holding an unnecessary election is an elected trustee.
2. **Majority Elected.** The law would not apply where a majority of the members of the board are elected and the new tax or the tax increase (above the certified rate) is approved by a majority of the board.

II. PROCEDURE TO AUTHORIZE A NEW TAX OR TO EXCEED THE CERTIFIED TAX RATE

A. **Truth in Taxation/Pledged Revenue.** The new law would only apply if the Truth in Taxation process is triggered (for example, it would not apply to a rate increase that is allowed under the law to maintain the same level of property tax revenue after there has been a decline in assessed valuations) and also would not apply to any tax to the extent revenue from the tax is pledged to pay general obligation bonds of the district.

B. **Front end options** – the board of an affected district may, prior to approving a new property tax or a tax rate that exceeds the certified rate, by motion select one of the following options:

1. Voter approval – the new tax or the tax increase may be presented to and voted up or down by the district voters.
2. Approval by appointing authority – the new tax or the tax increase may be voted up or down by the elected officials having the power to appoint the members of the board of trustees (i.e. a county or municipal legislative body).
 - i. If there are multiple appointing authorities (i.e. more than one municipality and/or county having a right to appoint), the taxing proposal would be voted on by each appointing authority. Where there are multiple jurisdictions, to avoid allowing one municipality or county to “hold the rest hostage”, a majority of the affected appointing authorities may approve the new tax or the tax increase.
3. Approval by impacted municipalities and counties – rather than presenting the new tax or the proposed tax increase to the appointing authority, it could be approved by each municipality that is partially or completely included within the local district and by any county having some or all of its unincorporated area included in the district.
 - i. Where multiple jurisdictions are involved, a majority of the jurisdictions may approve the taxation proposal.

C. Back end option – Limited Referendum – if the local district board intends to approve a new tax or a tax increase above the certified rate without obtaining approval of the same using one of the approaches identified in B. immediately above, the tax action will be subject to a referendum election procedure.

1. Preliminary Procedures – No district to which the law applies may increase its certified property tax rate unless it complies fully with the property tax levying process, including the Truth in Taxation provisions as set forth in Title 59 Chapter 2 Part 9 of the Utah Code entitled “Levies”, and the board of trustees declares its intention to increase its property tax above the certified rate as indicated in the Truth in Taxation process and a notice of this intention is published once in a newspaper of general circulation in the district and is posted on the state web page.
 - i. The notice of intention would state:
 - a. the name of the district;
 - b. the amount of the proposed tax increase; and
 - c. when and where petitions may be filed requesting the calling of an election to determine whether the increased tax rate should be levied.
 - ii. The board would specify the form of the petition.

- iii. If, within 30 days after the publication of the notice of intention to increase the property tax rate, a petition signed by not less than 15% of the qualified electors of the district, requesting that an election be called to authorize the increase in the property tax rate, is filed with the district, then the board would be required to call and hold an election to approve the property tax increase, or abandon the tax increase proposal.
 - a. County clerks would be required to provide voting records to the district to assist in determining if the petitioners are qualified electors of the district.
 - b. The district will follow the requirements of Title 20A, Chapter 7, Part 6 of the Utah Code entitled “Local Referendum – Procedures”, to determine each petitioner’s status as a qualified elector.
 - c. In those districts lying within multiple counties, each county must have the required number of petitioners.
- iv. If no petition is timely filed, or if the number of qualified elector signatures is less than the required 15%, the board of trustees may implement the tax increase proposal.
- v. For districts operating under a calendar year fiscal year, the limited referendum procedure will only apply to the first required Truth in Taxation hearing.

2. Election – If an election is required, it will be held at the next election date in November, whether it is a general election or a municipal election year, and will generally be conducted in accordance with the requirements of Title 20A, Chapter 7, Part 6 of the Utah Code. The district will be responsible for the costs of the election.

- i. The district board of trustees may, for purposes of the election, treat the entire district as a single voting district or divide the district into additional districts, and fix polling places.
- ii. If it is an even numbered year, in the alternative, the board may request the respective county clerk or clerks, if it is a multiple county district, to include the proposition to increase the district’s property tax rate as part of the county general election.
- iii. If it is an odd numbered year and the boundaries of the district generally coincide with the boundaries of one or more municipalities, also in the alternative, the board may request the municipality or municipalities to include the proposition to increase the district’s property tax rate as part of the municipal election.

- iv. A proposition similar to the following would be printed on the ballot, “Shall the resolution of the (name of the Board) approving an increase in excess of the certified property tax rate be repealed.”
 - v. After the votes have been counted, if a majority of the votes cast approve the repeal, the proposed certified property tax increase would not be implemented. If a majority of the votes cast were against the repeal, the decision of the Board to increase the property tax rate would be effective as of the original date approved by the Board.
3. Election Cost. A referendum election will not be required if the cost of the election would exceed 1% of the district’s operations and maintenance budget.

III. EXCLUSIONS

A. Existing Taxes. The law would not apply to property taxes lawfully in existence on the effective date of the Act and would not again apply after the tax has been approved as provided in II above, but would apply to any subsequent tax increase above the certified rate.

B. Grandfathered Trustees. The law would not apply to appointed board members serving on the effective date of the Act, who would be “grandfathered” for the remainder of their current terms.

IV. CONVERSION PROCEDURE

A. Transition to Elected Board. The law would contain a conversion procedure to allow a board having appointed members to transition to an elected board, and the district would be exempt from the application of the Act for the time necessary to complete the conversion (up to two election cycles).

V. EXCLUDED DISTRICTS

A. District Types Not Covered. The requirements in II above do not apply to the following:

1. Cemetery Maintenance Districts (Title 17B, Chapter 2a, Part 1) – they tend to be small and localized, with small budgets and particular needs.
2. Drainage Districts (Title 17B, Chapter 2a, Part 2) – They tend to be small and specialized and only the owners of benefited land participate in the cost.
3. Fire Protection Districts (Title 17B, Chapter 2a, Part 3) – most local districts that provide fire protection services are organized under the Service Area Act, not the Fire Protection District Act. By law, no new fire protection districts may be organized. Only a relatively small number of districts were organized under the Fire Protection District Act, and they tend to be small with small budgets.

4. Improvement Districts (Title 17B, Chapter 2a, Part 4) – Improvement districts come in all shapes and sizes. Most improvement districts have elected board members, but there are some “hybrid” districts that have a combination of elected and appointed board members.
5. Irrigation Districts (Title 17B, Chapter 2a, Part 5) – Irrigation districts are unique in that their boards are elected by water users, rather than by registered voters, and only water users pay for the service.
6. Mosquito Abatement Districts (Title 17B, Chapter 2a, Part 7) – Mosquito abatement districts, many of which have limited budgets, have specialized needs and perform a vital, specialized service. Having appointed boards gives the appointing municipality the ability to appoint board members with particular expertise who will be responsive to the needs of the municipality.
7. Public Transit Districts (Title 17B, Title 2a, Part 8) – By law, a public transit district may not impose a property tax unless the tax is first approved by the voters.

VI. REPEAL OF S.B. 135

A. Utah Code § 17B-2a-908 (S.B. 135 - 2009), which solely applies to service areas, would be repealed and replaced by the new law.