

UTAH ASSOCIATION OF SPECIAL DISTRICTS

SUMMARY OF POSSIBLE 2017 LEGISLATIVE ISSUES

November 4, 2016

For the past several months, the Association has been actively involved with Interim Committees of the Utah Legislature, individual legislators, local and special service district representatives, and others respecting: (1) “Cleanup” issues to be addressed by the Legislature at UASD’s request and (2) Concepts and legislative ideas that are being promoted by others that may impact Utah local districts and special service districts, for better or worse. This Summary is not presented in any particular order, and is not intended to be definitive. As the legislative session approaches, and especially during the 45 day session starting in late January, legislative issues will ebb and flow, with some ideas morphing into something different from the original concept, some issues being resolved without the Legislature considering a formal Bill, new issues arising, and old issues being resolved. All legislative ideas and concerns brought forward by a local district or a special service district will receive due and fair consideration. However, the final decision respecting the inclusion of a concept in a Cleanup Bill, and its support by the Association, is the province of the members and officers of the Association. When specific statutory language is quoted in this Summary, proposed deletions are bracketed and proposed inserts are underlined. Legislation specifically dealing with water or water rights is intentionally not included in this Summary.

UASD Clean-up Items

1. **Service Area Trustees:** Utah Code Ann. § 17B-2a-905 governs service area boards of trustees. Subsection (2) only applies to two service areas created in Salt Lake County, one to provide fire protection, paramedic and emergency services and the other to provide law enforcement. Under the statute, the Salt Lake County Council will appoint three members to the board of trustees as long as unincorporated land is included in the service area. In addition, as provided in Utah Code Ann. § 17B-2a-905(2)(b)(ii), “[e]ach municipality whose area 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 one member to the board of trustees.” On January 1, 2017, there will be six new municipalities in Salt Lake County, namely one city, Millcreek, and five metro townships, Copperton, Emigration Canyon, Kearns, Magna, and White City. To secure representation for Millcreek City and the five metro townships, it is suggested that the statutory language be amended to read: “(ii) Each municipality whose area 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 then or thereafter withdrawn from the service area.”

2. **UTA:** The Utah Transit Authority has asked the Association to address three statutory issues: First, an exemption from the seat belt law for paratransit vehicles so a personal care attendant will not be required to have or use a seat belt. Second, a declaration that an area within 100 feet of a transit facility or a transit vehicle constitutes a “drug free zone”, which

enhances the penalty that may be imposed for specified criminal violations. Third, an expansion of authority to allow night-time public transit construction activities, between the hours of 10:00 p.m. and 7:00 a.m., with certain procedural safeguards.

3. **Special Districts:** Historically, mosquito abatement districts, cemetery maintenance districts, improvement districts, service areas, fire protection districts, etc. were referred to generically as “special districts”, a designation that remains in use throughout the nation. When the various statutes governing special districts were brought together, first in Title 17A and presently in Title 17B of the Utah Code, the generic “special district” designation was changed to “local district” in legislation drafted by the Office of Legislative Research and General Counsel, primarily to make a distinction between truly independent local districts on one hand and special service districts, which ultimately remain under the control of the creating county or municipal legislative body, on the other. The Utah Association of Special Districts was formed when all of these districts were generically known as “special districts”. It has been suggested that the generic designation for local districts and special service districts be changed back to “special districts”, which would require a lengthy Bill due to the number of places in the Utah Code where the term “local district” currently resides. The perceived benefits of this change are that the Association will not need to consider changing its name, the change back to “special districts” will provide for consistent terminology with other states across the nation, and the change would help avoid confusion associated with the word “local”. With that change, there will be some confusion between special service districts and special districts, but that confusion exists now even with the term “local district” in use.

4. **Board Appointment Procedures:** Utah Code Ann. § 17B-1-304 spells out the process to be followed in the appointment of appointed local district trustees and special service district administrative control board members. Utah Code Ann. § 17B-1-304(5)(a) declares: “At the end of each board member’s term, the position is considered vacant and the appointing authority may either reappoint the old board member or appoint a new member after following the appointment procedures established in this section.” The question is: “Does ‘after following the appointment procedures established in this section’ modify both ‘reappoint the old board member’ and ‘appoint a new member’, or only modify ‘appoint a new member’?” In the interest of transparency and clarity, it is proposed that the operative statutory language be changed to read: “after following the appointment procedures established in this section, the appointing authority may either reappoint the ~~[old]~~ incumbent board member or appoint a new member ~~[after following the appointment procedures established in this section].~~”

5. **Board Appointment Divisions:** To make it clear that a district may be divided into divisions for the purpose of selecting both elected and appointed board members, it is proposed that Utah Code Ann. § 17B-1-302(1) be amended as follows: “(a) Each member of a local district board of trustees shall be: (i) a registered voter at the location of the member’s residence; and (ii) except as otherwise provided in this Subsection (1), a resident within: (A) the boundaries of the local district; and (B) if applicable, the boundaries of the division of the local district from which the member is elected or appointed.”

6. **Odd vs. Even Numbered Boards:** Local district boards of trustees and special service district administrative control boards are required to have an “odd” number of members.

With laws mandating that, under certain circumstances, impacted municipalities and counties are entitled to board representation, some boards may have more than nine members. The purpose of the odd number of members requirement is to make it easier to obtain a quorum and to minimize the likelihood of a tie vote. However, as the size of the board increases, concerns regarding achieving a quorum at a meeting or the likelihood of a tie vote diminish, and may be replaced by concerns that the board may become unwieldy due to its size. It has been suggested that the law be changed to eliminate the requirement that the board be comprised of an odd number of members once the membership of the board exceeds nine individuals.

Other Bills:

1. **Local District Property Tax Authority:** All members of local district boards of trustees are either elected by the voters or appointed by an elected body or person. Most appointed board members are appointed by the legislative body of a county or municipality, but some are appointed by the Governor with the advice and consent of the State Senate. Many local district boards are entirely elected, while others are appointed and a few are “hybrid”, having both directly elected and appointed members. Many appointed board members are elected officials, such as county commissioners, mayors and members of a city council. Under current law, for a local district to establish a property tax rate that exceeds the certified rate, at least a majority of the board members must be elected officials or the proposed new property tax or tax rate increase must be approved by the registered voters in an election, by the legislative body of the appointing authority, or by a majority of the legislative bodies of the municipalities that are partially or completely included within the local district and of any county wherein unincorporated land is located in the local district. Under the current law, “elected official” includes both a directly elected member of the board of trustees and any person appointed to the board who holds an elected position with a municipality, county or another local district that is partially or completely included within the boundaries of the subject local district. Some legislators consider an appointed board member voting on a property tax increase to constitute taxation without representation. During the last legislative session, Senator Fillmore sponsored a Bill that would have taken that authority away. The Association, working with others, was able to prevent the Bill from passing, but it is back! Senator Fillmore’s Bill is expected to prohibit a local district property tax increase above the certified tax rate unless each member of the board of trustees is a “directly elected official”, a majority of the registered voters within the district approve the new tax or increase, or the proposed new property tax or property tax increase is approved by two-thirds of the legislative bodies of each municipality located partially or completely within the district and each county with an unincorporated area in the district. For purposes of the Bill, “directly elected official” is defined to include only directly elected members of the board of trustees and to exclude elected mayors and elected members of local government legislative bodies (such as county and municipal), even though they occupy their appointed positions on the local district board by virtue of having been elected by the people they serve. Representatives of the Association have met with Senator Fillmore and other legislators (Senator Fillmore is not alone in this quest), and are working closely with the Utah League of Cities and Towns and the Utah Association of Counties. Those organizations, and the counties and municipalities they represent, would be directly impacted by the passage of this Bill. Either their appointed representatives on various boards of trustees will be replaced by directly elected trustees, thereby greatly diminishing the direct involvement of the county or municipality with

the district, or the respective county and municipal legislative bodies will be required to consider and approve or disapprove a proposed property tax increase by any (and possibly every) local district located partially or entirely within the boundary of the municipality or county, which would undercut the independence of local districts. There already may be a rumbling within the Legislature to expand the concept to include service fees, not just property taxes. The Association has spent a great deal of time and effort on this issue, and will continue to do so. If a reasonable compromise cannot be achieved, an all-out effort to defeat the Bill will be necessary. Your help with local legislators will be critical!

2. **Election Participation:** Many of us are concerned about voter participation in local district and special service district board elections. That concern is shared by many legislators, including Representative Fawson. He would like to make local district elections more “robust”. What can we do to get the word out? To attract dedicated candidates and educated voters to participate? The Association is looking into statutory requirements applicable to government entities, including districts, respecting advertising to publicizing open board positions and increasing voter awareness and participation. Once we have concrete ideas, we intend to meet with Representative Fawson to discuss productive statutory language that could be implemented, unless we can come up with a better non-legislative solution. When a local district cancels an uncontested election, we may tend to interpret it as a sign that all is well and our constituents are pleased with the status quo, and the district can save thousands of dollars of public funds that otherwise would be spent on the election. That may feel good, but it does not look good to legislators. They typically run and prevail in contested elections, and have a firm conviction that that is how democracy should work, and that the system is broken if it doesn’t work that way. Brainstorming sessions have been held and many good ideas have been presented, not all of which will require legislation to implement. For example: Place a clear, conspicuous notice on your district’s web site well in advance of the candidate declaration period and notify the Lieutenant Governor and your county to request that the notice be placed on their web sites. If your district mails bills to customers, include candidate and election notices with your bills. Make sure there is always a clerk, or a properly trained assistant clerk, in attendance during normal business hours during the candidate declaration period to answer questions and accept candidate declarations. If you publish a newsletter, use it to hit your election hard! The more you do, above and beyond the minimum statutory requirements, the less likely it will be that the Legislature will second guess you or impose more stringent requirements on your district.

3. **Sales Tax Exemption For Public Building Materials:** Presently, building materials purchased by a governmental entity that are installed by employees of that entity are not subject to the payment of a sales tax. However, if the building materials are not installed by employees of the purchasing governmental entity but are, instead, installed by someone else, such as a contractor, a sales tax must be paid. A Bill may be considered to expand the sales tax exemption for public building materials.

4. **State Oversight:** A couple of years ago, the Administrative Rules Review Committee considered whether to recommend to the Legislature that a statutory process be put in place to enable citizens to raise concerns with local government actions, particularly ordinances, that they feel violate state law without having to go to court. Nothing was recommended at that

time, but the issue was considered again last month. Paul Ashton represented the Association at that meeting. The Committee was particularly interested in knowing what training is provided to district boards, city councils, county councils, and county commissions to ensure that the public is protected against unjust and possibly illegal ordinances, rules and regulations. Paul was able to report that all local district and special service district board members are required by statute to receive training through the State Auditor and the UASD and, unlike municipalities and counties, with very limited exceptions (such as the police district in Salt Lake County), do not have general police powers. Rather, districts are limited purpose governments that focus on providing one or a limited number of services. A recent UASD Cleanup Bill clarified that the statutory board member training requirement applicable to local district trustees and special service district board members mandates training at least once during each four year term. That clarification may now pay dividends. We are hopeful that a Bill will not materialize during the 2017 Legislative Session. The best way to avoid bad legislation is for district personnel, at both the staff and board levels, to treat everyone with whom they deal with dignity and courtesy and to give their patrons and others a fair hearing so they will not feel a need to seek a legislative “fix”.

5. **Retail Water Line Disclosures:** During the 2016 Session of the Utah State Legislature, Senator Mayne successfully sponsored a Bill that requires public providers of sanitary sewer services to provide an annual disclosure stating whether the record owner of the property being served or the public service provider is responsible for repair and replacement of the sewer lateral that serves the property. Senator Mayne worked closely with the Association in crafting the Bill language, which provides a number of alternatives that may be used to distribute the required disclosure. Senator Mayne intends to sponsor another Bill in 2017 that will impose on public retail water providers the same annual disclosure requirements as now apply to public providers of sanitary sewer services.

6. **Governmental Immunity:** Utah Code Ann. § 63G-7-102(3) defines a “governmental entity” to include the state and its political subdivisions, such as local districts and special service districts. The Governmental Immunity Act of Utah imposes a damages cap on personal injury actions against a governmental entity. A Bill is expected that would provide a procedure under which a personal injury claim in excess of the damages cap may be presented to the Executive Appropriations Committee of the Legislature for consideration, possibly including arbitration. At the end of the proceeding, the Executive Appropriations Committee may recommend paying some or all of the excess damages claim or recommend a denial of the claim. The General Fund Budget Reserve Account may be used to pay excess damages claims as recommended by the Executive Appropriations Committee. The Bill is also expected to increase the amount of the statutory damages cap in an action against a governmental entity or employee from \$583,900 to \$1,000,000 for one person in one occurrence and to increase from \$2,000,000 to \$5,000,000 the limit on the aggregate amount of individual awards that may be awarded as a consequence of a single occurrence.

7. **Service Encroachment:** As a result of an audit of water improvement districts, the Legislative Auditor’s Office recommended a Bill that would protect a local district service area from subsequent service encroachment by a municipality unless the local district consents or the area is withdrawn from the local district in accordance with applicable law. This would not

prevent a municipality from annexing all or part of a local district, nor would it impede the creation of a new municipality. It would, however, provide protection to a local district that has already constructed infrastructure and undertaken obligations to provide a service, such as water, sewer or electricity, to an area that a municipality subsequently desires to serve. The Association intends to work closely with the Utah League of Cities and Towns on this issue. The Office of General Counsel and Legislative Research has prepared a Bill for the Political Subdivisions Interim Committee that is now under consideration.

8. **Procurement:** No legislative session would be complete without at least one procurement Bill. The Association of General Contractors approached State Purchasing with concerns about the “best and final offers” section of the Utah Procurement Code. The Association of General Contractors and State Purchasing are working together on statutory modifications, primarily dealing with the addition of details and requirements respecting best and final offers as part of the request for proposals (RFP) process under the Procurement Code. The Association has been given an opportunity to provide input, and the proposed language has been distributed to a procurement working group chaired by Richard Bay. Thus far, comments and suggestions have been submitted by the Utah Transit Authority and by the Association’s General Counsel. If you have not seen the proposed statutory language, and would like to, it can be obtained from LeGrand Bitter, Richard Bay or Mark Anderson.

9. **Governmental Nonprofit Organizations:** There is an ongoing discussion, coordinated through the office of the Utah State Auditor, concerning criteria to qualify a nonprofit organization as a governmental entity. If deemed to be a governmental entity, a nonprofit entity could be subject to the Government Records Access and Management Act (GRAMA), the Open and Public Meetings Act, the Money Management Act, State Auditor audits, etc. The elements currently under consideration are: Did government create the nonprofit entity? Does government exercise a controlling interest over the nonprofit? Does the nonprofit receive government funding? Does the nonprofit perform a government function? Does the nonprofit receive government benefits? And how many “yes” answers should be required for the nonprofit to be treated as a governmental entity?

Conclusion

An ad hoc committee will meet every Tuesday at noon in a room located just South of the Capital cafeteria in the Senate (East) building. Bills will be reviewed and discussed during the meetings, and the committee will determine the Association’s position on each Bill, which may be “track”, “drop”, “support”, “amend” or “oppose”. Your participation in the meetings is encouraged and appreciated.