



**UTAH ASSOCIATION OF SPECIAL DISTRICTS**  
**2017 BILL REVIEW**

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By the end of the 2017 session of the Utah State Legislature, the Association was following and addressing more than 189 Bills. During the session, many additional Bills were reviewed and investigated to make sure they had no impact on local districts or special service districts that, once the lack of impact was confirmed, were dropped from the weekly legislative summary.

“H.B.” stands for “House Bill” and “S.B.” stands for “Senate Bill”. Most of the Bills were “tracked”, but a number of them were actively supported or opposed by the Association. During the course of the forty-five-day legislative session, weekly meetings were held at the Capitol, at which all interested local district and special service district representatives were welcome. Bills were reviewed during those meetings and the position of the Association on each Bill was determined. By the end of the legislative session, the Association supported 57 Bills (almost certainly a record), 48 (84%) of which passed. The Association opposed 20 Bills, 14 of which were eventually amended or substituted, resulting in the Association changing its position on those Bills to Support or Track. The remaining six Bills that the Association opposed all failed to pass.

This analysis does not include every passed Bill that may impact your district, and no one district will be impacted by all of the Bills that are reviewed. The reviews, in most instances, merely touch upon some of the salient features of the Bill. Most of the reviewed Bills are not limited to local districts and special service districts. They may, for example, also apply to counties, municipalities, etc. However, this review is limited to the impact on local and special service districts. If, from the brief summary presented below, it appears that a Bill may be applicable to your district, you are urged to review the entire Bill, which may be viewed online at [www.le.utah.gov](http://www.le.utah.gov) (go to “Bills,” then click on “Passed Bills,” then scroll down and click on the desired Bill number) and, if appropriate, to consult your attorney. You may also contact the Association’s General Counsel, Mark H. Anderson, at (801) 323-2234 or [mhanderson@fabianvancott.com](mailto:mhanderson@fabianvancott.com).

## **BOARD SELECTION, COMPOSITION, AND OPERATION**

### **H.B. 55, Governmental Nonprofit Entity Compliance Amendments**

UASD Position: Track

H.B. 55 requires governmental nonprofit corporations to be managed by a governing board and to comply with certain laws that traditionally are applicable to governmental entities, such as the Open and Public Meetings Act, the Government Records Access and Management Act (GRAMA), and fiscal procedures for interlocal entities. A “governmental nonprofit corporation” is defined as (1) any nonprofit corporation that is wholly owned or wholly controlled by one or more governmental entities, unless the nonprofit corporation receives no operating funding or other financial support from any governmental entity, or (2) a nonprofit corporation in which one or more governmental entities exercise a controlling interest and that (a) exercises taxing authority, (b) imposes a mandatory fee for association or participation, which association or participation is mandated by law, or (c) receives a majority of the nonprofit corporation’s operating funding from one or more governmental entities (except voluntary membership fees, dues, or assessments). “Governmental nonprofit corporation” does not include a water company, unless the water company is wholly owned by one or more governmental entities. This exemption for water companies, however, will sunset on July 1, 2019. Efforts should be made to work with the State Auditor to find a solution that works for nonprofit water companies and the State Auditor before the sunset date.

### **H.B. 163, Municipality Per Diem Amendments**

UASD Position: Track

H.B. 163 has resulted in confusion respecting per diem and other payments that may lawfully be made to local district and special service district board members. This Bill requires that per diem and travel expenses for board members not exceed rates established by the Division of Finance. Rules adopted by the Division of Finance currently allow a per diem payment of \$90.00 for a full day or \$60.00 for a half day activity. This applies to board member per diem payments for up to 12 meetings or activities per year as allowed under Utah Code Ann. § 17B-1-307(2) and to annual board member training under Utah Code Ann. § 17B-1-312(3). These restrictions have no application to district employees -- they only cover board members. They also have no application to annual board member compensation under Utah Code Ann. § 17B-1-307(1).

### **H.B. 328, Service Area Board of Trustees Modifications**

UASD Position: Support

H.B. 328 clarifies that the boards of trustees of the Unified Fire Service Area and of the Unified Police District (Department), both of which were organized as service areas, are to include a representative of each included municipality regardless of whether the municipality became part of the district “in conjunction with the creation of the service area or by later service area annexation or municipal incorporation or annexation”. Utah Code Ann. § 17B-2a-905(2)(b)(ii). This clarification secures a seat on each board of trustees for each of the new municipalities (one city and five metro townships) that were recently created in Salt Lake County.

### **H.B. 432, District Board Appointment Amendments**

UASD Position: Support

H.B. 432 allows a county legislative body to appoint to a local district board one of the county legislative body's own members, regardless of whether the elected county official resides within the district boundaries, if no qualified candidate timely files to be considered for appointment to the local district board. The member of the county legislative body that is appointed to the local district board must have been elected in an at-large position, or elected in a division that includes more than 50% of the area of the local district and, if applicable, the division of the local district.

### **S.B. 97, Public Meeting Minutes Amendments**

UASD Position: Track

S.B. 97 modifies the Open and Public Meetings Act, primarily by providing that the requirement to include in Board meeting minutes "the substance of matters proposed, discussed, or decided or the substance of testimony or comments" may be satisfied "by maintaining a publicly available online version of the minutes that provides a link to the meeting recording at the place in the recording where the matter is proposed, discussed, or decided or the testimony or comments provided." Utah Code Ann. § 52-4-203(2)(b). Whether providing that link is easier and more cost effective than including the required detail in the minutes may be questionable, but that option is now available.

## **ENERGY/ENVIRONMENT**

### **H.B. 315, Aquaculture Amendments**

UASD Position: Track

H.B. 315 authorizes the Department of Natural Resources to create a Private Aquaculture Advisory Council to give advice and make recommendations to the commissioner of the Department of Agriculture and Food and the Wildlife Board on rules pertaining to private fish ponds, private stocking, short-term fishing events, and aquatic animal species authorized for importation or use in aquaculture facilities, fee fishing facilities, private fish ponds, short-term fishing events, and private stocking. The Bill also modifies documentation requirements for a transfer or shipment of live aquatic animals. Finally, it allows the Division of Wildlife Resources to authorize an aquaculture facility, public aquaculture facility, fee fishing facility, or private fish pond upon a natural lake or reservoir constructed on a natural stream channel, in certain circumstances.

### **S.B. 113, Natural Resources Modifications**

UASD Position: Support

S.B. 113 amends the Sales and Use Tax Act to decrease the percentage of sales and use tax revenue received by the Division of Water Resources and reallocates that money to increase the percentage of sales and use tax revenue received by the Division of Water Rights to cover the cost incurred to employ additional technical staff for the administration of water rights. This

earmark will result in an increase of funds to the Division of Water Rights of \$1,727,500 in fiscal year 2017 and \$1,895,600 in fiscal year 2018.

## **ETHICS**

### **H.B. 431, Government Employees Reimbursement Amendments**

UASD Position: Track

Recently, a few government employees were caught using government funds to make personal purchases. Even though some of these individuals promptly paid back the governmental entity for the personal purchase, the Legislature, through H.B. 431, determined to make clear that such a practice is illegal. An officer or employee of any public entity may not use public funds or public credit for a personal use. If an officer or employee is found to have knowingly violated this law, the officer or employee must immediately reimburse the political subdivision and pay an administrative penalty into the operating fund of 50% of the personal use expenditure. The officer or employee may appeal the decision. An appeals process must be established by each district. Consequently, the UASD suggests that each district address this issue in its policies. Wages may be withheld to reimburse the district only after an appeals process has been completed and the officer or employee is found to have violated this law. An officer or employee who has been convicted of misusing public funds may no longer disburse public funds or access public accounts. This Bill, while assigning certain penalties, does not preclude other appropriate criminal or civil prosecution. Excluded from the definition of “personal use expenditure” are de minimis or incidental expenditures, monthly vehicle allowances, or use of a government vehicle for personal use if such use is specifically allowed by district policy.

## **FINANCE AND BUDGETS**

### **H.B. 135, Deposit of Public Funds**

UASD Position: Support

Under prior law, the responsible district officer was required to deposit public funds in the officer’s possession not less frequently than once every three banking days (and the public officer was encouraged to deposit those funds daily). Under H.B. 135, the public officer is still encouraged to deposit the funds daily, but must deposit them no less frequently than “once every three banking days”, which will give the district treasurer, or other responsible officer, a bit more leeway. Utah Code Ann. § 51-4-2(2)(a).

### **H.B. 324, Local Budget Hearing Notice Amendments**

UASD Position: Track

H.B. 324 only applies to municipalities and counties. It requires a municipality or county to post a notice of any budget hearing on the entity’s website at least seven days prior to the day of the hearing. The UASD tracked this Bill because, in the future, a similar Bill may be considered that would apply to districts.

### **S.B. 137, State Auditor Fiscal Auditing and Reporting Amendments**

UASD Position: Support

S.B. 137 changes the threshold for certain accounting reports. Previously, a local or special service district whose revenues or expenditures of all funds was \$750,000 or more was required to obtain an audit of its accounts by a CPA. This threshold has been increased to \$1,000,000. The Bill also allows the State Auditor to seek relief under the Utah Rules of Civil Procedure to take temporary custody of public funds if an action is necessary to protect public funds from being improperly diverted from their intended public purpose.

### **FUNDING/TAXATION**

#### **S.B. 93, Property Assessment Notice Amendments**

UASD Position: Track

S.B. 93 changes the County official who is to provide a notice to the owner of real property when a local or special service district places a lien on the property for past due service fees from the County Auditor to the County Treasurer. If a district files a lien on a customer's property for past due fees "the treasurer of the county shall provide a notice ... to the owner of the property for which the local district has incurred the past due fees" which notice "shall: (i) include the amount of past due fees that a local district has certified on or before July 15 of the current year; (ii) provide contact information ... for the property owner to contact the local district to obtain more information ...; and (iii) notify the property owner that: (A) if the amount described ... is not paid in full by September 15 of the current year, any unpaid amount will be included on the property tax notice required by Section 59-2-1317; and (B) the failure to pay the amount described ... has resulted in a lien on the property in accordance with this section." Utah Code Ann. § 17B-1-902(2). The County Treasurer is required to provide the notice on or before August 1<sup>st</sup>. S.B. 93 has a delayed effective date of January 1, 2018.

#### **S.B. 94, Local District Revisions**

UASD Position: Track

S.B. 94, sponsored by Senator Lincoln Fillmore, was initially opposed by the UASD. Originally, the Bill would have essentially eliminated the taxing authority of any local district that does not have a 100% directly elected board and would have required the approval of a local district's budget by counties and municipalities served by the district. However, with the assistance of the UASD and the support of other local government organizations, the Bill was amended. Beginning January 1, 2018, each appointed local district board member will be required to report to the member's appointing or nominating authority before a local district property tax rate is increased above the certified rate. However, formal approval by such appointing authorities, or any other county or municipal governing body, is not required.

## **GOVERNMENTAL IMMUNITY**

### **H.B. 399, Governmental Immunity Amendments**

UASD Position: Support

H.B. 399 defines “arises out of or in connection with, or results from” and declares that “[a] governmental entity and an employee of a governmental entity retain immunity from suit if an injury arises out of or in connection with, or results from, conduct or a condition described in Subsection 63G-7-201(3) or (4), even if immunity from suit for the injury is waived under Section 63G-7-301.” Utah Code Ann. §§ 63G-7-101(4) and -102(1). The practical effect of this Bill is that governmental entities and employers are immune from suit for an injury that arises out of or in connection with or results from a long list of causes such as a latent dangerous or a latent defective condition of a public structure or facility (including roads, streets, sidewalks, culverts, bridges, etc.); negligence in the exercise or performance of, or failure to exercise or perform, a discretionary function regardless of whether the discretion is abused; the issuance, denial, suspension or revocation of a permit, license, certificate, approval, etc.; an inadequate or negligent inspection; a misrepresentation made by a governmental employee; the management of flood waters; the construction, repair or operation of flood or storm systems; providing emergency medical assistance or fighting a fire; etc.

## **IMPACT FEES**

### **H.B. 89, Impact Fee Reporting Requirements**

UASD Position: Track

H.B. 89 mandates that any local political subdivision that collects an impact fee must a report to the State Auditor “within 180 days after the day on which the fiscal year ends” and, in addition to identifying all impact fee receipts and expenditures during the year, the report must account “for all impact fee funds that the local political subdivision has on hand at the end of the fiscal year”. Utah Code Ann. § 11-36a-601(4)(b) and (d)(iii).

### **H.B. 279, Impact Fee Amendments**

UASD Position: Support

H.B. 279 expands the law requiring an impact fee to be refunded to a developer if the fee has not been spent or encumbered within six years, by providing a process by which such impact fees are to be refunded. This Bill requires any unused impact fees to be returned to the original owner, if the original owner is the sole claimant or, if there are multiple claimants, to be divided as the claimants agree or, if the claimants fail to agree, the impact fee may be interplead to a court having jurisdiction to determine who should receive the refund. The Bill also requires a notice to be posted on a district’s website for one year, stating the district’s intent to issue a refund, if the last known address of the original owner of the fee is no longer valid. An original owner is disqualified from asserting a claim for the refund after one year from the first posting of the notice. Any unclaimed refunds, after one year, may be spent on capital facilities identified in the

district's current capital facilities plan for the type of public facility for which the impact fee was collected. Utah Code Ann. § 11-36a-603.

### **LAW ENFORCEMENT**

#### **H.B. 433, Penalty for Targeting Law Enforcement Officer**

UASD Position: Support

H.B. 433 makes an aggravated assault that results in serious bodily injury a first degree felony if a law enforcement officer is targeted. "Targeting a law enforcement officer" is defined as "the commission of any offense involving the unlawful use of force and violence against a law enforcement officer, causing serious bodily injury or death in furtherance of political or social objectives in order to intimidate or coerce a civilian population or to influence or affect the conduct of a government or a unit of government." Utah Code Ann. § 76-5-210.

### **LEGAL NOTICE**

#### **H.B. 117, Legal Notice Amendments**

UASD Position: Track

H.B. 117 modifies the criteria for a publication to be deemed a "newspaper of general circulation" for the purpose of publishing notices required by Utah law. As previously required, a newspaper must have a bona fide subscription list of not fewer than 200 subscribers in the state and must have been published for 18 months or longer. H.B. 117 removes outdated language and establishes further criteria, including that the newspaper must either be eligible for mailing under a United States Postal Service periodical permit for at least 12 months, or must publish at least 12 issues a year, with at least 25% local or general interest content which it is not paid to publish. Utah Code Ann. § 45-1-201(3).

### **LEGISLATING AND RULEMAKING**

#### **H.B. 272, Regulatory Impact Amendments**

UASD Position: Track

H.B. 272 requires both the Office of the Legislative Fiscal Analyst and all agencies engaging in the rulemaking process to analyze the regulatory impact of proposed legislation or proposed administrative rules on state residents and businesses. The Office of Legislative Fiscal Analyst must indicate whether a proposed Bill would increase or decrease the regulatory burden on residents and businesses, and state whether the change is high, medium, or low. In regards to agency rulemaking, agencies must follow procedures to be established by the Governor's Office of Management and Budget regarding the fiscal impact, especially on small businesses.

### **LOCAL AND SPECIAL SERVICE DISTRICTS**

#### **H.B. 195, Dissolution of Local Districts**

UASD Position: Support

The UASD originally opposed H.B. 195, but the Bill's Sponsor, Representative Justin Fawson, worked with the Association to draft a Substitute Bill that works better. This Bill improves the procedures required to dissolve an active local district. Previously, 100% of the landowners or registered voters in the area of the district were required to initiate the dissolution of an active district. This Bill reduces that percentage to a more reasonable level—33% of all registered voters residing within the district, or owners of real property in the district that cover at least 33% of the private land area and that amounts to at least 25% of the assessed value of all private property in the district. Unlike the original version of the Bill, however, the Bill that passed does *not* allow an administrative body outside of an active district's Board of Trustees to initiate a dissolution of an active district. The Bill requires the district to study, prepare, and explain to constituents how the dissolution will be accomplished in a way that ensures, for example, that outstanding debts are satisfied or assumed by another entity and that another entity has committed to provide the service that currently is provided by the district.

### **H.B. 229, Amendments Relating to Local Districts**

UASD Position: Support

H.B. 229 affects the Unified Fire Authority (UFA) and the Unified Police District (Department) (UPD), and concerns the procedures required for a municipality to withdraw from an entity like UFA or UPD which provides fire protection, paramedic, and emergency services or law enforcement services. The original Bill was extremely problematic for UFA and UPD. It would have allowed any member municipality to leave either entity with a simple majority vote of that municipality's council. UASD worked extremely closely with UFA and the sponsor to come up with a solution that will allow a municipality to withdraw while protecting the district from experiencing a difficult economic hit from the withdrawal. UASD's General Counsel worked with the drafting attorney and came up with three ways for a municipality to withdraw from UFA or UPD: (1) The municipal council and the district board may agree to a withdrawal. (2) If the district board disagrees with the withdrawal, a very detailed feasibility study must be prepared to quantify what is needed for the district to remain whole. If the municipality and the district board agree to the terms and conditions, the withdrawal may occur. (3) If the municipality agrees to the terms and conditions but the district board still disagrees to the withdrawal, the withdrawal issue will go to an election for the residents to decide. Options 2 and 3 require multiple public hearings. This process increases transparency and provides protection for the remaining areas within a district if a withdrawal were to occur.

### **S.B. 111, Unmanned Aircraft Amendments**

UASD Position: Support

Among other things, S.B. 111 makes it illegal to fly an unmanned aircraft (i.e. a drone): (1) from a public transit rail platform or station or under a height of 50 feet within a public transit fixed guideway right-of-way, and (2) directly above any overhead electric lines used to power a public transit rail vehicle. It also gives guidance to law enforcement officials regarding written warnings and issuing citations for violating the law. The restrictions do not, however, apply to a person or business entity using an unmanned aircraft for legitimate educational or business purposes and operating the unmanned aircraft system in a manner consistent with applicable Federal Aviation Administration rules, exemptions, or other authorizations. This will allow mosquito abatement



districts to use unmanned aircraft in their efforts to kill mosquitos and mosquito eggs. The Bill may also be beneficial to public transit districts.

**S.B. 143, Local District Board Amendments**

UASD Position: Support

S.B. 143 is a UASD clean-up Bill which addresses a variety of issues applicable to local and special service districts to “fix” issues that were identified the previous year. The Bill makes several technical corrections to the Utah Code, such as correcting internal references to Code sections. For instance, S.B. 143 modifies Sections of the Utah Code that refer to residency requirements for appointed local district board members by including references to portions of the Code detailing the residency requirements which previously and inadvertently were not referenced. Another technical change applies to the law stating the procedures required for a property tax that exceeds the certified tax rate to be levied. One of the methods of approving such a tax increase is to obtain a majority vote of registered voters within the local district. This Bill clarifies that the proposed property tax increase must be approved by a majority of those who actually vote—not by a majority of all registered voters.

**PROCUREMENT/PURCHASING**

**H.B. 398, Procurement Code Amendments**

UASD Position: Support

Each year since the recodification of the Procurement Code a few years ago, the cleanup Bill has gotten smaller, if you can call a 92-page Bill “small”. H.B. 398 primarily clarifies Procurement Code provisions in response to real-life situations that have arisen. For example, the provision that makes it a crime for a person to artificially divide a procurement into smaller procurements, to enable each of the smaller procurements to qualify as a “small purchase”, now speaks in terms of the person doing so “knowingly”, rather than “intentionally or knowingly”. Obviously, any person dividing a procurement is doing so “intentionally”, but whether the person is knowingly attempting to evade Procurement Code requirements should be (and now is) the test to determine whether criminal penalties should apply to the conduct. Utah Code Ann. § 63G-6a-506(8). New Section 63G-6a-2404.3 sets forth the criminal penalties that are applicable to an unlawful division of a single procurement into multiple smaller procurements, while new Section 63G-6a-2404.7 makes it unlawful for a person, through threats or intimidation, to attempt to improperly influence a public employee or officer, or retaliate against such employee or officer, with respect to the employee’s or officer’s procurement duties. Utah Code Ann. § 63G-6a-707.5, which also is new, recodifies the “best and final offers” procedure that is applicable to the request for proposals procurement process. The Bill also clarifies how procurement appeal hearings are to be conducted and what constitutes a “protest appeal record”. *Id.* § 63G-6a-1601.5(2) and (3). The Bill includes a provision that declares that “[a] procurement appeals panel shall consider and decide the appeal based solely on: (a) the notice of appeal and the protest appeal record; and (b) responses received during an informal hearing, if an informal hearing is held”. *Id.* § 63G-6a-1702(7).

**S.B. 133, Procurement Process Amendments**

UASD Position: Track

S.B. 133 mandates that a request for proposals for a construction project “require each offeror to include in a proposal a description of the offeror’s company safety plan and the offeror’s safety plan for the specific project that is the subject of the proposal”. Utah Code Ann. § 63G-6a-703(2)(e). See also § 63G-6a-707(1)(c).

### **S.B. 204, Public-Private Partnerships**

UASD Position: Support

S.B. 204 defines a “public-private partnership” as “an arrangement or agreement, occurring on or after January 1, 2017, between a procurement unit and one or more contractors to provide for a public need through the development or operation of a project in which the contractor or contractors share with the procurement unit the responsibility or risk of developing, owning, maintaining, financing, or operating the project” and makes the request for proposals procurement process found in Part 7 of the Utah Procurement Code applicable to efforts by a procurement unit to enter into a public-private partnership. Utah Code Ann. §§ 63G-6a-103(69), -702(2)(e), and -703(2)(i). Public-private partnerships have not been used by many local or special service districts, but that may change in the future. Any district contemplating a public-private partnership must issue a request for proposals in order to select a public-private partner.

## **RECORDS**

### **S.B. 242, Government Records Access and Management Act Amendments**

UASD Position: Support

S.B. 242 amends the Government Records Access and Management Act (GRAMA). The Bill states that a governmental entity is not required to comply with a GRAMA record request made by an incarcerated individual, after that person has been convicted. There is an exception to this restriction: The first five record requests made by an incarcerated individual during a calendar year will be processed if the records being requested contain a specific reference to the incarcerated individual, as will requests for records made by the incarcerated individual’s attorney. This Bill also increases the time the chief administrative officer of a governmental entity has to respond to an appeal of the denial of a record request from 5 to 10 business days after receipt of the notice of appeal. If the requester demonstrates that an expedited decision benefits the public rather than the petitioner, an expedited process of 5 business days after receipt of the notice of appeal is required under GRAMA. If there is a judicial review of a records committee order, the court may not remand the petition to the records committee for any additional proceedings. The Bill also clarifies that, during the appeal process, neither of the two public members on a political subdivision’s appeals board may be employees or officials of any governmental entity.

## **SOLID WASTE**

### **H.B. 115, Solid Waste Revisions**

UASD Position: Track

As first introduced, H.B. 115 would have created a significant shift in the fee structure for solid waste treatment, transport, and disposal. It would have lowered the fees for private solid waste companies and greatly increased the fees for public solid waste providers. After a great deal of work by UASD, the League of Cities and Towns, the Utah Association of Counties and a number of concerned solid waste districts, the Bill was changed drastically, taking the fee changes out of the Bill. Instead, the current fee structure will remain in effect until December 31, 2018, but all interested parties are required to work together and with the Division of Waste Management and Radiation Control over the coming months to complete a review of program costs and indirect costs of regulating nonhazardous solid waste in the state, and to use the findings of the review to create an “equitable and fair” fee schedule. Solid waste created from mining ores and minerals is exempt from this statute.

## **WATER AND WATER RIGHTS**

### **H.B. 84, Water Law – Nonuse Applications**

UASD Position: Support

H.B. 84 clarifies and rewords portions of the nonuse application statute by clearly stating that the approval of a nonuse application excuses the requirement of beneficial use from the date of filing, and that the time the nonuse application is in effect does not count against the seven-year forfeiture period. The approval or filing of a nonuse application does not constitute beneficial use of the water right and does not protect or revive a right that is already subject to forfeiture. A nonuse application, however, does not prevent the user from actually using the water right.

### **H.B. 118, Authority of State Engineer**

UASD Position: Support

H.B. 118 is a very simple Bill that merely adds four words to Section 73-2-1 of the Utah Code. It states that the State Engineer shall make rules regarding the “duty of water.” The duty of water refers to the quantity of water required to satisfy the water requirements for a given purpose, such as irrigation. The State Engineer has always established the duty of water for a particular purpose. This Bill officially gives the State Engineer that authority.

### **H.B. 180, Water Rights Transfer Amendments**

UASD Position: Support

H.B. 180 allows the holder of an application to appropriate water, which has not yet been approved, to transfer the application to another person using a form provided by the State Engineer. Such transfer using the State Engineer’s form is treated as a Report of Water Right Conveyance when recorded and forwarded to the State Engineer, and title to the unperfected water right will be updated.

### **H.B. 181, State Engineer Fee Application Amendments**

UASD Position: Support

H.B. 181 makes a technical correction to clarify that the State Engineer is to charge a fee for an application for nonuse of water. Under the list of items for which the State Engineer may charge a fee, the Bill changes the old phrase “extension of time in which to resume use of water” to the more accurate and currently used phrase “application for nonuse of water.”

### **H.B. 301, Canal Safety Amendments**

UASD Position: Support

H.B. 301 modifies language in the Utah Municipal and County Codes, which already requires municipalities and counties to notify canal companies or canal operators when an application for a subdivision approval is filed on land located within 100 feet of the center line of a canal. This Bill moves the language from the parts of the Utah Code that set forth general land use regulations to more appropriate parts of the Code that specifically govern subdivisions. The Bill also slightly modifies prior language to require that a notice of a subdivision application is to be provided to the canal owner or operator within 20 days after the application is filed, rather than the prior deadline of 30 days, and requires that the land use authority wait at least 20 days, rather than the prior deadline of 10 days, after sending out the canal notice before approving or rejecting the land use application. The Bill clarifies that the purpose of the notice period is for the municipality or county to receive input from the canal owner or operator regarding access to the canal, maintenance of the canal, and canal safety. Finally, the Bill makes minor changes to clarify that canal companies or operators must ensure that the municipality or county has current contact information for the canal owner or operator.

### **H.C.R. 15, Concurrent Resolution on Sustainable Management of Utah’s Water Quality**

UASD Position: Support

H.C.R. 15 is a Concurrent Resolution of the Legislature and the Governor recognizing that, even though the Utah Department of Environmental Quality (“DEQ”) has the responsibility to protect Utah’s water and implement the Environmental Protection Agency’s Clean Water Act, publicly owned treatment works and local elected officials should work collaboratively with DEQ in addressing water quality concerns through regulation. The Concurrent Resolution urges that standards should be set based on the best available research and science, recognizing that the cost of complying with new standards could be high. When the costs of compliance are anticipated to be significant, the Concurrent Resolution urges that the Legislature should be informed of the cost and benefits of the compliance standards.

### **S.B. 11, Water Development Commission Amendments**

UASD Position: Track

S.B. 211 renames the State Water Development Commission to the Legislative Water Development Commission. The Bill significantly changes the membership of the Commission and takes some control away from the Governor and places it with the Legislative Management Committee. The Bill removes from the Commission the State Treasurer (who was a non-voting member) and all 18 non-voting members who were appointed by the Governor, which included representatives from different water districts in the state, representatives of various state agencies, and a few citizen representatives. The Governor no longer has the power to appoint

non-voting members, but the Legislative Management Committee, in consultation with the co-chairs of the Commission, *may* appoint additional nonvoting members, although it is not required to do so and no specific categories of individuals are required to be included

#### **S.B. 45, Retail Water Line Disclosure Amendments**

UASD Position: Support

S.B. 45 expands Section 11-8-4 of the Utah Code, which already requires public owners or operators of sanitary sewer facilities to provide an annual disclosure explaining whether the record property owner is responsible for repair and replacement of its sewer lateral, meaning the pipe that connects a property to the sanitary sewer main line (the notice must include the definition of “sewer lateral”). The statute now imposes similar requirements on public providers of retail culinary water, and increases the timing of the notice from once to at least twice per calendar year. Public retail water providers must now make a disclosure, at least twice a year, explaining whether the record property owner is responsible for the repair and replacement of its retail water line and include in the notice the statutory definition of “retail water line.” Utah Code Ann. § 11-8-4.

#### **S.B. 63, Nonprofit Corporation Amendments – Water Companies**

UASD Position: Support

S.B. 63 revises portions of the Utah Revised Nonprofit Corporation Act as it applies to shares of stock in a water company. First, the Bill provides a default rule that ownership shares of a water company are transferable, unless otherwise provided in the articles of incorporation or bylaws of the company. If the company does choose to adopt transfer restrictions, such restrictions must be reasonable and be adopted in good faith and for a legitimate purpose, adopted in the best interest of the water company and its shareholders, and may not discriminate against any individual shareholder or class of shareholders. Second, the Bill allows a water company to purchase back shares of a shareholder who is delinquent in the payment of shareholder assessments, in accordance with law. Third, the Bill states that, unless otherwise provided by agreement, the articles of incorporation, or the bylaws of a water company, a water company shareholder has an equitable, beneficial interest in the use of the water supply proportionate to the shareholder’s shares in the water company, and that this interest is an interest in real property. Finally, the Bill provides that a water company may make distributions, or distribute the company’s assets to a shareholder of the water company, in a manner consistent with the company’s governing documents and applicable law.

#### **S.B. 214, Public Water Supplier Amendments**

UASD Position: Support

S.B. 214, as originally introduced, proposed to add public water suppliers to the list of entities that may file an application with the Division of Water Rights for an instream flow, which list currently includes only the Division of Wildlife Resources, the Division of Parks and Recreation, and certain nonprofit fishing groups. Instream flow is a non-consumptive water use that does not require diversion of the natural watercourse nor reduce the water supply. The Bill was eventually

substituted to simply provide a statement that some public water suppliers have expressed an interest in exploring the possibility of expanding the list of entities that can apply for an instream flow, while recognizing that the issue is very complex and will require thoughtful participation by a number of stakeholders. The Bill encourages the Water Development Commission and the Executive Water Task Force to study the issue and present their findings, conclusions, and recommendation to the Legislature before the 2018 General Session.

**S.J.R. 11, Joint Resolution Urging Congress to Provide the Necessary Funding for Completion of the Central Utah Project**

UASD Position: Support

S.J.R. 11 is a Joint Resolution of the Legislature, to be delivered to Utah's United States congressional delegation, as well as to the Majority Leader of the U.S. Senate and the Speaker of the U.S. House of Representatives, urging the new administration to budget sufficient funds to complete the Central Utah Project (the "CUP), specifically the Bonneville Unit of the CUP. The CUP is a project that is intended to enable development of a significant portion of Utah's allocated share of the waters of the Colorado River. The federal Central Utah Project Completion Act of 1992 authorized the Central Utah Water Conservancy District (the "District") to finish construction of the CUP, and requires the District to pay 35% of construction costs, with the United States providing the remaining 65% of construction funding, subject to repayment by the District. The U.S. Congress has failed to provide funding in recent years, stalling construction. The Joint Resolution notes that Utah's population is projected to double by the year 2065, and contract purchasers of project water from the District need the CUP water in the immediate future.