UTAH ASSOCIATION OF SPECIAL DISTRICTS
2013 BILL REVIEW

By Heather N. Anderson, Lobbyist
and
Mark H. Anderson, General Counsel

By the end of the recently completed session of the Utah State Legislature, the Association was following 176 Bills. "H.B." stands for "House Bill" and "S.B." stands for "Senate Bill". Most of the Bills were "tracked" or "followed", 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 Capital 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 54 Bills and opposed 18 Bills. Of the Bills supported by the Association, 43 passed (80%), while only 4 of the Bills opposed by the Association passed (22%).

This analysis covers a relatively small sample of the Bills that may impact your district, and it is unlikely that any 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 districts. If, from the brief summary presented below, it appears that a Bill may be applicable to your district, you are strongly recommended to review the entire Bill, which may be viewed on line at www.le.utah.gov (go to "Bills", then clock on "Passed Bills", scroll down and click on the desired Bill number then click on "Enrolled" PDF or HTML) and, if appropriate, that you also consult your attorney. You may also contact the Association's Executive Director, LeGrand Bitter at 801-725-1312, or by email at legrand@uasd.org.

BOARD MEETINGS:

S.B. 77 Availability of Government Information—Sponsor: Deidre Henderson

This Bill deals with transparency and the Open and Public Meetings Act. It significantly changes how administrative, advisory, executive or legislative bodies of the state, and county and municipal legislative bodies, conduct business relative to making minutes, recordings of meetings and public materials distributed at meetings available to the public, but leaves intact the way local district, special service district, and interlocal agency boards and many other public bodies operate. A notice issued by State Archives has resulted in some confusion on that point. To be clear, the following requirements generally continue to be applicable to district boards: pending, unapproved, minutes of a public meeting are to be available to the public within a "reasonable" time after the meeting is held; approved minutes are to be available to the public within three business days after approval; an audio recording of the public meeting must be available to the public for listening within three business days after the meeting; and there is no specific requirement in the Open and Public Meetings Act that materials distributed at a district board meeting be made available to the public (but such materials are subject to GRAMA). Utah Code Ann. § 52-4-203(4)(f).

S.B. 148 Conservation Districts-Closed Meeting Amendments—Sponsor: David Hinkins

This Bill mandates that a meeting of a conservation district board is to be closed when the purpose of the meeting is "advising the Natural Resource Conservation Service of the United States Department of Agriculture on a farm improvement project if the discussed information is protected information under federal law." Utah Code Ann. § 52-4-205(2)(c).

<u>BONDING/BORROWING</u>:

HB 175 Local and Political Subdivision Bonding Notice Requirements—Sponsor: John Knotwell

This Bill amends Section 11-14-316 of the Utah Code to require, in addition to other elements, that the following be included in bond notices: the total par amount of currently outstanding bonds that are secured by the same pledge of revenues as the proposed bonds; information on how an individual may access more detailed information about the bonds; and the estimated total cost to the political subdivision if the bonds are held to maturity, based on interest rates in effect when the notice is published.

S.B. 34 Special Election Date for Ballot Propositions—Sponsor: Howard Stephenson

Senator Stephenson has diligently worked for years to limit possible dates when a bond election may be held. Prior to S.B. 34, there were two potential election dates each year, including both municipal and general election years: the primary election date and the general election date. Now, an election for a bond, debt, leeway, levy or tax may only be held in November as part of the general election. This Bill takes effect July 1, 2013

S.B. 172 Use of Bond Proceeds by Political Subdivisions—Sponsor: John Valentine

This Bill limits the use of bond proceeds after a specified time period. Proceeds from bonds issued after May 14, 2013 are prohibited from being used for operation and maintenance expenses beyond one year after the date the bonds were issued and bond proceeds may not be used for the capitalization of interest beyond five years after the issuance of the bonds.

<u>BUDGETS</u>:

S.B. 276 Water Conservancy District Capital Investments—Sponsor: John Valentine

This Bill establishes a pilot program for the management of capital assets by requiring a water conservancy district with an annual operating budget greater than $5,000,000 to adopt a policy for the assessment, maintenance, and replacement of capital assets. Such districts must complete an inventory of each qualified capital asset and establish a method to assess the physical condition and the performance and condition standards of each capital asset. A process for monitoring and reporting and evaluating existing capital assets for efficiency must be created. Each qualified district must adopt financial guidelines to dedicate revenue to capital assets that are considered a priority, and a multiyear qualified capital assets plan must be created. Each affected conservancy district must submit a report of the district's qualified capital assets facilities to the Director of the Division of Water Resources by December 31, 2017, and at least every five years thereafter. S. B. 276 will allow reserves to be built up so money will be available to fund the repair and replacement of capital assets. If the pilot program works well, it may be expanded to cover other districts with heavy capital facilities needs.

DISTRICT AND ASSESSMENT AREA CREATION/WITHDRAWAL:

H.B. 35 Retirement Analysis for New Public Entities—Sponsor: Don L. Ipson

One of the final steps for the creation of a new local district or special service district is the delivery of a notice of impending boundary action to the Lieutenant Governor who, after determining that all of the statutory prerequisites have been satisfied, will issue a Certificate of Creation. If the new district may hire at least one employee, H.B. 35 requires that the notice of impending boundary action be accompanied by a letter from the Utah State Retirement Office addressed to the person or body submitting the notice to the Lieutenant Governor. The letter is to identify "the potential provisions under Title 49, Utah State Retirement and Insurance Benefit Act, that the local entity shall comply with, related to the boundary action". Utah Code Ann. § 67-1a-6.5(3)(d).

H.B. 66 Political Subdivision Amendments—Sponsor: Curt Webb

This Bill deals with requirements for the creation of a local district, a special service district, and an assessment area. Local districts and special service districts are governmental entities – political subdivisions of the state of Utah – whereas an assessment area is a funding mechanism to pay for improvements that will benefit property within the assessment area. Assessment areas may be established by counties, municipalities, local districts, special service districts, interlocal entities and other political subdivision of the state. H. B. 66 creates uniformity in the creation or establishment process by taking the most conservative, or restrictive, provision that formerly was applicable to local districts, special service districts or assessment areas and making it universally applicable to the creation or establishment process for local districts, special service districts and assessment areas. In its final form, H.B. 66 establishes the following relative to creating or establishing local districts, special service districts and assessment areas: a property owner (applicable to the establishment of a local or special service district or an assessment area) or a registered voter (applicable only to the creation of a local or special service district) may file a written protest within 60 days after the public hearing on the proposed establishment; any person who filed a protest may withdraw the protest within the same 60 day period; the continuance of a public hearing does not restart or extend the protest period; the governing body of the creating entity (i.e. a county or a municipality) cannot consider the adoption of a resolution or ordinance that would establish or create the local or special service district or the assessment area before the expiration of the protest period, and the governing body is required to consider and report on any timely filed protests; a notice that is required to be published as part of the creation or establishment process must be published once each week for four successive weeks, with the final publication being at least five and not more than 20 days before the public hearing or first set of hearings; rather than using the number of votes cast for the office of Governor at the last general election, 25% of the number of votes cast in the subject area for the office of President of the United States during the most recent election establishes the number of voter protests that will cancel the proposed creation or establishment; and written protests filed by the owners of private real property that consists of at least 25% of the total private land area within the subject area and is equal in value to at least 15% of the value of all private real property within the area also will halt the creation or establishment process.

H.B. 334 Special Service District Reorganization—Sponsor: Daniel McCay

H. B. 334 provides a procedure, which includes public notice and a public hearing, to reorganize a special service district as a local district. The legislative body of the county or municipality that created the special service district is in complete control of the process. The concurrence of any municipality, all or part of which is included within a county-created special service district, is required for the reorganization to take place. The reorganization should never be "hostile" because it requires the consent, if not the active participation, of all affected counties and municipalities and incorporates public input. After the reorganization, the new local district may not provide any service that the special service district was not authorized to provide. H.B. 334 also allows a municipal-type services district created by a county to be reorganized as a local district by following the same process. H.B. 334 may be particularly useful for counties that have created special service districts as a vehicle to provide municipal-type services in unincorporated areas or by contract with municipalities. In 2014, the legislature may consider making the reorganization process more difficult, possibly by requiring voter approval, even though the process involves the conversion of an existing special service district rather than the creation of a new political subdivision.

H.B. 348 Local District Amendments—Sponsor: Don Ipson

Utah Code Ann. § 17B-1-502(3) authorizes the governing body of a newly created municipality within a county of the first class to adopt a resolution that will result in the withdrawal of areas located within the new municipality from a previously existing local district that provides fire protection, paramedic, and emergency services or law enforcement services, provided that an election was not required in the creation of the district because of Utah Code Ann. § 17B-1-214(3)(d). H.B. 348 modifies the automatic withdrawal procedure by requiring that the legislative body of the newly incorporated municipality adopt a resolution approving the withdrawal within 180 days after the effective date of the incorporation. Upon the legislative body's failure to do so, the automatic withdrawal provision will no longer be operative.

ELECTIONS:

H.B. 44 Election Polling—Sponsor: Gregory Hughes

H.B. 44 is designed to prevent a "push poll" from creating a bias or slander. It requires any person who conducts a poll to disclose who paid for the poll at the beginning or conclusion of the poll. A $100 fine may be imposed by the Lieutenant Governor for a failure to disclose that information. However, a focus group interview, conducted in person by an individual, does not qualify as a poll "if: (A) the focus group consists of more than three, and less than thirteen, individuals; and (B) all individuals in the focus group are present during the interview." Utah Code Ann. § 20A-11-101(36)(b)(ii).

H.B. 53 Election Law Amendments—Sponsor: Kraig Powell

Among the amendments of the Election Code (Title 20A of the Utah Code) implemented by H.B. 53, the Bill clarifies that, provided the absentee ballot application deadline has not passed when the election official determines that the signature on an absentee ballot does not match the voter's signature that is maintained on file, another absentee ballot is to be sent to the voter. It also clarifies that a mailed absentee ballot is not valid unless it is postmarked on or before the election day and is received by the election officer before noon on the day of the election canvas.

H.B. 85 Voting Recount Amendment—Sponsor: Craig Hall

This Bill changes the formula for determining when a voting recount may be requested. Previously, a recount could be requested if the candidate, ballot or bond proposition lost by no more than a total of one vote per voting precinct. Now, for a recount to be requested, the vote difference must be less than or equal to 0.25% of the total of all votes cast in the election and, in races in which 400 or fewer votes were cast, the vote difference must be only one vote. In elections regarding ballot or bond propositions, the recount request must be made within seven days after the election by at least 10 voters who voted in the election. A request for a recount in a local district election is to be filed with the local district clerk.

H.B. 378 Election Revisions—Sponsor: Craig Hall

This Bill modifies the Election Code to allow a person to vote at any polling location within the person's county of residence as long as the voter is registered to vote in the state and the ballot contains at least one proposition or candidate that would be on the ballot if the person voted in the designated polling location for the area within which the voter resides. If the voter falls into this category, the election officer will place the voter's provisional ballot with the absentee ballots to be counted with the absentee ballots at the canvass provided, however, that the only votes to be counted are those for or against a ballot proposition or for a candidate in a race for which the voter is legally entitled to vote. If the voter is not registered to vote, but the information on the provisional ballot envelope is complete, the election officer will consider the provisional ballot envelope to be a voter registration form for the person's county of residence and register the person in that county, or forward the information on to the county where the voter resides and that county's election officer will register the person to vote.

H.B. 403 Municipal Election Amendments—Sponsor: Curt Webb

During the legislative session, we ran head-on into a problem: because of certain deadlines in the election laws, it was not feasible for county clerks to conduct elections for local districts and special service districts. H.B. 403 fixed the problem. The candidacy filing period has been reduced from 15 days to 7 days (during normal business hours between June 1 and June 7) during odd numbered years, which is when district elections are held. Now a local district clerk must certify the names of the local district board candidates by June 12 instead of by July 20. In addition, the deadline for filing a write-in declaration of candidacy has been changed from 45 to 60 days before the municipal general election.

FINANCES:

S.B. 179 Local Government Financial Reporting Revisions—Sponsor: Curtis Bramble

This Bill increases the income threshold from $350,000 to $500,000 for an audit to be made of all financial accounts by a competent certified public accountant. A financial report, in the manner prescribed by the state auditor, will be required for all entities, such as local districts and special service districts, whose revenues or expenditures are less than $500,000.

LAND USE AND DEVELOPMENT:

H.B. 224 Impact Fee Amendments—Sponsor: Daniel McCay

For the first time, H.B. 224 defines "level of service" ("the defined performance standard or unit of demand for each capital component of a public facility within a service area") and mandates that every impact fee facilities plan identify the existing level of service, establish a proposed level of service, and identify excess capacity that may accommodate future growth at the proposed level of service. A proposed level of service may diminish or equal the existing level of service. However, if the proposed level of service will exceed the existing level of service, financial sources other than impact fees must be used to increase the existing level of service to the proposed level of service within six years after new growth is charged for the proposed (increased) level of service. Historically, local political subdivisions (such as districts) and private entities serving fewer than 5,000 people have been exempt from the requirement to prepare a full-blown impact fee facilities plan. Now, to qualify for that exemption, the impact fees charged by a "small" entity must total less than $250,000 annually. An entity that qualifies for that exemption must base its impact fee on "a reasonable plan that otherwise complies with the common law and" the Impact Fee Act. H.B. 224 defines a "private entity" that will be subject to the requirements of the Impact Fee Act as an entity in private ownership that has at least 100 individual shareholders, customers or connections, is located in a first through fourth class county, and provides water to a developer who is required to obtain water from the company either as a specific condition of development approval imposed by the land use authority (county or municipality) or as a functional condition of development approval because the private entity has no reasonably equivalent competition in the immediate market and is the only realistic source of water that is required for the development. Water storage facilities were added to the definition of "public facilities" for which an impact fee may be assessed. H.B. 224 clarifies that an advisory opinion on the legality or justification for an impact fee may be sought from the Property Rights Ombudsman under Utah Code § 13-43-205 at any time prior to the enactment of the impact fee. The Impact Fee Act is found in Title 11, Chapter 36a, of the Utah Code.

S.B. 153 Local Government Development Amendments—Sponsor: Stuart Adams

S.B. 153 requires any local district to comply with the municipal or county Land Use Development and Management Act ("LUDMA") found respectively in Title 10, Chapter 9a (municipal) and Title 17, Chapter 27a (county), of the Utah Code if the land use authority (the municipality or county) consults with or allows the district to participate in the land use development review or approval process. The intent is to provide uniformity for developers in matters such as the maximum warranty (generally 12 months) and any bond ("improvement completion assurance") that must be posted by the developer (based upon the lesser of actual cost or the engineers estimate with no multiplier -- a 10% maximum during the warranty period) applicable to infrastructure such as water and sewer lines and facilities that are installed by a developer and conveyed to the district as a condition of providing service to the development. LUDMA also includes such things as planning and zoning, variances, etc., that have no logical application to districts. S.B. 153 also provides that, should a governmental entity impose an exaction (such as land to enable a road to be widened) at the request of another governmental entity, the exaction must be transferred to the governmental entity for which it was exacted.

<u>LOCAL AND SPECIAL SERVICE DISTRICTS</u>:

S.B. 200 Local and Special Service District Amendments—Sponsor: Jerry Stephenson

Each year, the UASD prepares a "Cleanup Bill" to fix little problems that are brought up during the year. S.B. 200 is this year's Cleanup Bill. It: (1) reduces from $10,000,000 to $1,000,000 the threshold above which a local district, special service district or city of the first class may utilize a design build contract for a public works project, such as a water line or sewer line or a water or sewage treatment plant (but not a traditional building) provided that the district or city is assisted by an experienced licensed engineer. Design build is a construction process that enables an owner to enter into one contract for the design, construction and delivery of a "turn-key" public works project; (2) a newly created local district (including any district created after January 1, 2005) will be required to commence operating within 5 years after its creation or face automatic dissolution administered by the State Auditor and the Lieutenant Governor; (3) rather than commencing on the January 1 following appointment, the term of a trustee of a multi-county water conservancy district who is appointed by the Governor with the consent of the Senate will "begin on the date on which the senate consents to the appointment"; (4) S.B. 200 clarifies that a local district board member continues to serve until a successor is duly elected or appointed and qualified, which may be other than on January 1st; (5) county clerks are authorized to "consolidate two or more polling places to enable voters from more than one district to vote at one consolidated polling place"; (6) state law, which prohibits a local district board member from also being an employee of the district, is clarified to enable a board member to be treated as an employee for federal income tax purposes, so long as the board member does not receive excess compensation; (7) "cemetery services" have been added to the list of services that may be provided by a special service district; (8) an appointing authority, such as a county commission or city council, may fill a mid-term local district board vacancy with a member of the appointing authority without having to go through all of the red tape that would otherwise be required; and (9) S.B. 200 includes a number of additional minor "cleanup" statutory changes.

MISCELLANEOUS:

H.B. 94 Free Market Protection and Privatization Board Act Amendments—Sponsor: Keven J. Stratton

H.B. 94 codifies and amends the Privatization Policy Board Act, changes the membership of the 17 member Board, and renames the Board. The Utah Association of Special Districts, the Utah Association of Counties and the Utah League of Cities and Towns each appoint one Board member. The other Board members consist of four legislators, two public employees, one member of state management, and seven from the private business community. The primary function of the Board is to examine and make recommendations regarding the privatization of government activities, including activities provided by local districts and special service districts.

H.B. 103 Wireless Telephone Use Restriction—Sponsor: Lee Perry

This Bill makes it illegal for any person younger than 18 to use a wireless telephone while operating a motor vehicle on a state highway except during a medical emergency, when reporting or requesting assistance relating to a safety hazard or crime, or while communicating with a parent or legal guardian.

H.B. 108 Metal Theft Amendments—Sponsor: Jack Draxler

This Bill increases criminal penalties, both for a person who steals metal and for the dealer who purchases stolen metal, and requires metal dealers to obtain a photograph and signature for each transaction from repeat sellers of metal.

H.B. 205 Contingency Plans for Political Subdivisions—Sponsor: Ken Ivory

This Bill requires any district that receives federal funds that comprise 10% or more of the district's annual budget to develop contingency plans dealing with how the district will operate if the federal funds are reduced. The district must develop two contingency plans: one detailing how the district would operate if federal funding were reduced by 5% or more but less than 25% and one based on a reduction in federal funding of 25% or more in the next fiscal year. These plans must be developed before the beginning of the next fiscal year, and copies must be submitted to the State Auditor and be published on the district's website, if it has a website.

S.B. 70 Commission Relating to Federal Issues—Sponsor: Diedre N. Henderson

This is a companion bill to H.B. 205. It creates a thirteen member Federal Funds Commission to study and make recommendations on federal funding and other issues relating to the federal government's dealings with Utah; including the financial stability of the federal government, the level of dependency that the state and local governments have on the receipt of federal funds, and the risk and likely potential impact of a reduction in federal funding. After November 30, 2014, the Commission will study, assess and provide recommendations on any federal issue raised by the Governor or the Legislature. Utah Code Ann. § 63C-14-301.

S.B. 221 Assessment Area Act Amendments—Sponsor: Kevin Van Tassell

This Bill allows a local district, a special service district, an interlocal entity and other specified local entities to provide an energy efficient upgrade or a renewable energy system as part of a voluntary assessment area, with the written consent of all lien holders. To be eligible for inclusion, all property taxes, special assessments, and water and sewer charges must be current for the property and the property may not be subject to any mechanics lien or foreclosure action. The local entity that is responsible for the assessment area is to provide a list of authorized energy efficient service providers to each property owner, who will select a service provider from the list. Under Utah Code Ann. § 11-42-408(2)(c) "a local entity may levy an assessment against property owned by the federal government or a public agency if the federal agency or public agency voluntarily enters into a voluntary assessment area for the purpose of financing an energy efficiency upgrade or a renewable energy system." Payments for these upgrades are to be made by the property owner in installments as provided in the assessment resolution or ordinance.

PROCUREMENT:

S.B. 190 Procurement Revisions—Sponsor: Scott K. Jenkins

A total rewrite of the Utah Procurement Code was initiated in last year with the adoption of S.B. 114 and S.B. 153. The effective date of S.B. 153 was delayed until May 1, 2013 to enable the Legislature to correct known deficiencies. The result is this year's S.B. 190. A brief analysis could not do justice to this Bill, which had an effective date of May 1, 2013 to coincide with the effective date of 2012's S.B. 153. The revised Utah Procurement Code has been moved, in its entirety, to new Chapter 6a of Title 63G of the Utah Code. The entire Procurement Code, with the exception of Part 23 "Unlawful Conduct Penalties", is applicable to all local districts and special service districts, and a working group is putting together legislation for the 2014 legislative session that will rewrite Part 23, with the intent that it be applicable to all governmental procurement in the state of Utah, including local districts, special service districts, municipalities and counties. In the meantime, the procurement activities of local districts and special service districts will be subject to the Public Officers and Employees Ethics Act (Utah Code Ann. §§ 67-16-1 *et. seq.*) and anti-bribery statutes. Local districts and special service districts have until May 13 of next year to prepare purchasing policies that are in harmony with the requirements of the Procurement Code. To the extent any district fails to do so, the district will be subject to state purchasing rules and regulations approved by the fifteen member Procurement Policy Board. Two of the members of the Procurement Policy Board are appointed by the UASD. The Association is providing procurement training and, before the UASD Convention in November, will provide model purchasing policies and procedures that may be customized and used by individual districts. There also will be training on the model purchasing policies and procedures and the Procurement Code during the Convention. Until you have purchasing policies in place, your purchases will be controlled by, and be subject to, the new Utah Procurement Code and your old purchasing polices, to the extent they are in harmony with the new Procurement Code. It may take some getting used to, but the new Utah Procurement Code is a significant improvement that provides new options and benefits.

RECORDS/REPORTING:

H.B. 99 Submitting Government Reports—Sponsor: Patrice Arent

This Bill requires that, when a report is submitted to the legislature or to a legislative committee, it is to be submitted electronically and a printed copy is to be provided only if requested. Similarly, financial reports submitted to the State Auditor, are to be submitted in the manner required by the State Auditor and a printed copy is to be submitted only if requested. Utah Code Ann. § 68-3-14.

H.B. 330 Financial Reporting Amendments—Sponsor: Steve Eliason

H.B. 330 creates Title 11, Chapter 50, of the Utah Code "Political Subdivision Financial Reporting Certification". Henceforth, the annual financial report of a political subdivision, such as a local district or special service district, must separately be certified, under oath, by the chief administrative officer and by the chief financial officer of the political subdivision as follows: "Under penalty of perjury, I, [officer's name] certify that the [annual financial report] of [political subdivision] for the year ended [date] fairly presents in all material respects the financial condition and results of operations of [political subdivision]." Utah Code Ann. § 11-50-201.

WATER RIGHTS:

H.B. 29 Adjudication of Water Rights—Sponsor: Joel Briscoe

H.B. 29 is the first of a number of Executive Water Task Force Bills enacted into law this year. The goal of H.B. 29 is to improve the adjudication of water rights by allowing the State Engineer to divide a water right general adjudication area into districts and subdistricts, a process described by Fred Finlinson as "eating an elephant one bite at a time." The Bill transfers some responsibilities in a water right general adjudication from the clerk of the court to the State Engineer and provides for the electronic service of water right claims and of the proposed determination. Five or more, or a majority of, water users may submit a petition to the State Engineer requesting an investigation of the rights of all water right claimants for a particular water source. The State Engineer is to investigate the claim and, if justified, file a judicial action for a general adjudication of water rights. The law now requires the State Engineer to search the records of the State Engineer's office to locate and notify all possible claimants and serve a summons on each possible claimant in the general adjudication. After the State Engineer has completed a survey of the water source and notified each possible claimant, any claimant desiring to claim a water right has 90 days to submit a written statement of claim in accordance with Utah Code Ann. § 73-4-5. The State Engineer is required to serve a summons by mail to all claimants of record within a general adjudication area, division or subdivision, and to serve, by newspaper publication, a general summons to claimants in a general adjudication who are not of record in the State Engineer's office. The summons is to be published once a week for five weeks. Notice of completion of the report and of the proposed determination must be given to each claimant of record. A claimant who desires to object to the State Engineer's report will have ninety days to do so by filing a written objection and proposed determination with the clerk of the district court.

H.B. 36 Storm Water Capture Amendments—Sponsor: Jim Nielson

The State Engineer is prohibited from commencing an enforcement action against someone who captures and stores precipitation on owned or leased land in a manner consistent with local laws and ordinances and that doesn't interfere with any vested water right, provided that the water is absorbed or released and not put to a beneficial use. The purpose of capturing and storing the water is to slow, detain or retain storm water or protect the watershed from pollution. This Bill also allows the collection and use of precipitation without obtaining a water right provided that the maximum storage capacity does not exceed 2,500 gallons. A person does, however, have to register on the State Engineer's website if the person's storage capacity consists of more than two covered storage containers, neither of which exceeds 100 gallons.

H.B. 72 Safe Drinking Water Disclosure Act—Sponsor: Roger Barrus

This Bill requires public water suppliers, who are authorized by a majority vote of the electorate to add fluoride to public drinking water, to receive a batch specific certificate of analysis that reflects the complete composition of the undiluted raw fluoride substance, which must be given to a member of the public on request. If the public water system violates this requirement by not obtaining and making available the required documentation, the local health department is required to order the temporary removal of fluoride from the public water supply until the public water system is in compliance. The local health department will issue a public notice if fluoride is removed from the public drinking water.

H.B. 73 Water Easement Amendments—Sponsor: John Mathis

A prescriptive easement for a water conveyance is established, even though the owner of the land where the ditch or canal is located has not granted any rights, when the ditch or canal is utilized continuously (such as during each irrigation season), notoriously (which means the use must be obvious or apparent), and adversely (which means the property owner hasn't given you the right to use the land), for twenty years. Ordinarily, extinguishing a prescriptive easement requires an equal period (twenty years) of non use. H.B. 73 provides a procedure for the holder of a prescriptive easement for a water conveyance to abandon all or part of the easement. The Bill describes the process involved in relinquishing a prescriptive easement, including recording the abandonment with the county recorder, publishing a notice of intent to abandon once a week for two successive weeks and posting the notice in three public places, mailing a copy of the notice to each county and municipality within which the easement is located, and placing the notice on the state public notice website. Forty-five days after completing that procedure, the holder of the prescriptive easement may file a notice of abandonment with the County Recorder. The owner of the land may then reclaim the land area occupied by the former easement and resume full utilization of the land, and the former easement holder will no longer be responsible for the easement. If your district wishes to abandon a prescriptive easement, please read this three page Bill and follow the outlined steps.

H.B. 166 Water Rights Amendments—Sponsor: Ken Ivory

This Bill was requested by the Farm Bureau to attempt to counter actions by the federal government. Federal agencies reportedly have restricted access or required a water rights exaction as part of the process for issuing grazing permits on federal land. In part, the Bill was generated by a battle between the Town of Tombstone, Arizona and the United States Forest Service. Tombstone's water supply includes springs located in mountains that are now part of a wilderness area. H.B. 166 purports to allow a person who a holds grazing permit from a public land agency (land owned or managed by the United States or the state, but not land owned by the Division of Wildlife Resources, the School and Institutional Trust Lands Administration or the

Division of Parks and Recreation) to access or improve the permitted grazing area as necessary to beneficially use, develop and maintain the permit holder's water right that is appurtenant to the allotment. The State Engineer is required to provide, to the Natural Resources, Agriculture and Environment Interim Committee, copies of claims to water not already represented that are filed by the federal government, and the Department of Natural Resources is required to study the state's jurisdiction over water rights, draft legislation, and report to the Interim Committee before November 30 of this year.

H.B. 326 Division of Water Rights Amendments—Sponsor: Curt Webb

Water rights, particularly irrigation water rights, may be appurtenant to land. An appurtenant water right is automatically conveyed with the land unless the water right is specifically excluded from the conveyance. Land conveyance deeds are recorded with the county recorder where the property is located, but recorded deeds aren't always provided to the State Engineer, who is the "gatekeeper" respecting water rights in Utah. H.B. 326 requires the State Engineer to consider a recorded water rights addendum that is forwarded by a county recorder as a submitted report of a water right conveyance and to recognize a recorded tract indexed deed as an effective conveyance of appurtenant water rights. Some water rights are held in the name of water companies, instead of the landowners who use the water. Rather than being conveyed by recorded deed, H.B. 326 clarifies that the right to the use of water that is evidenced by shares of stock in a corporation is to be transferred by following Uniform Commercial Code requirements unless the company's Articles of Incorporation or Bylaws provide otherwise.

H.B. 360 Water and Irrigation Revisions—Sponsor: Ryan Wilcox

H.B. 360 clarifies that the protection granted by a non-use application only protects against forfeiture during the active status of the non-use application. The effective period of the non-use application isn't counted toward the seven year non-use period that can result in the forfeiture of a water right but a non-use application won't protect a water right application that already is subject to forfeiture, due to the owner abandoning or ceasing to use all or a portion of a water right for a period of seven years.

S.B. 30 Water and Irrigation Amendments—Sponsor: Margaret Dayton

S.B. 30 started life as an Executive Water Task Force Bill, but was expanded to cover a number of "cleanup" items. Among other things, the Bill changes some of the State Engineer's mandatory rule making authority to permissive rule making authority in such areas as waste water reuse and a claim for water that isn't represented by a certificate of appropriation. The Bill removes the requirement that an engineer or land surveyor verify by oath information stated on a claim to surface or underground water that is not otherwise appropriated. It also prohibits the State Engineer, in a proposed determination of water rights, from asserting forfeiture unless seven years of non-use have occurred within the fifteen year period immediately before the State Engineer files the proposed determination, and someone else cannot raise the issue of forfeiture unless the State Engineer raised the issue in the proposed determination or the person timely objected to the proposed determination. The State Engineer may not assert that a water right was forfeited unless nonuse has occurred for at least seven years during the fifteen years immediately preceding the day the Sate Engineer files the proposed determination with the court. If a claim is made to surface or underground water not otherwise represented by certificates of appropriation, the claim no longer has to be verified under oath. It can simply be prepared by a registered engineer or land surveyor.

S.B. 101 Division of Water Rights Revisions—Sponsor: Margaret Dayton

This Bill modifies provisions of Title 73, Water and Irrigation, regarding fixed time period applications and claims to surface or underground water not otherwise represented, and makes technical corrections. The State Engineer is required to state the time within which construction work must be completed and the water must be applied to a beneficial use for any approved application other than a fixed time application. If a corrected claim which is not represented by a certificate of appropriation, an application filed with the State Engineer, a court decree, or a notice of claim filed pursuant to law that meets the requirements found in Utah Code Ann. § 73-5-13(3)(a), is filed with the State Engineer, the State Engineer may not charge an additional fee for the filing and the corrected claim will be treated as if it were the original claim. In a general adjudication of water rights, once the State engineer has completed the service of summons upon all claimants as required by Utah Code Ann. § 73-4-22, the court may prohibit future claims from being filed.

<u>WATER QUALITY</u>:

H.B. 215 Water Quality Amendments—Sponsor: Ryan Wilcox

Prior to HB 215, the combined fees assessed against a sewage sludge permitee under Utah Code Ann. § 63J-1-504 could not exceed $28,000 annually. HB 215 eliminates the maximum fee limitation.

REVIEW OF SELECTED BILLS
Adopted by the 2013 Utah State Legislature

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