UTAH ASSOCIATION OF SPECIAL DISTRICTS

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and

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2014 BILL REVIEW

By the end of the 2014 session of the Utah State Legislature, the Association was following 178 Bills, but had reviewed a far greater number of Bills. Many Bills were reviewed and investigated to make sure they had no impact on local districts or special service districts and, once that 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" 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 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 48 Bills, ¾ of which passed, and opposed 11 Bills, none of which passed!

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 urged to review the entire Bill, which may be viewed on line at 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 Anderson, at (801) 323-2234 or mhanderson@fabianlaw.com.

ANIMAL SHELTERS

S.B. 120 Shelter Animal Vaccine Amendments -- Sponsor Scott K. Jenkins

Prior to SB 120, a licensed veterinarian was the only person legally authorized to administer a rabies vaccination. SB 120 allows an unlicensed animal shelter employee to administer a rabies vaccination as long as the employee is under the indirect supervision of a veterinarian who is under contract with the shelter. Utah Code Ann. § 58-28-307(14)(b). The Bill also exempts animal shelters that are operating under the indirect supervision of a veterinarian from the requirement to obtain a pharmacy license to purchase, store or administer drugs used for rabies vaccinations and animal euthanasia. *I.d.* § 58-17b-309(2)(f).

ASSESSMENT AREAS

H.B. 102 Assessment Area Amendments -- Sponsor R. Curt Webb

You may have heard about a Bill that placed a moratorium on the establishment of new assessment areas. HB 102 purported to establish such a moratorium, starting May 13, 2014, to be in effect until May 12, 2015. Due to unintended consequences of the legislation, the Bill was vetoed by Governor Herbet. It may, however, not be the last time that the establishment of assessment areas as a mechanism to pay for required infrastructure is subject to legislative scrutiny.

CEMETERIES

S.B. 158 Cemetery Amendments -- Sponsor Scott K. Jenkins

It has long been a requirement that plats of cemeteries be recorded in the office of the local County Recorder and that properly executed certificates of burial rights be provided to each purchaser of a lot or burial right. Those requirements have been clarified through amendments to Utah Code Ann. §§ 8-3-1 through 8-3-3. SB 158 also adopts new Utah Code Ann. § 8-6-2 which requires anyone controlling a cemetery, including cemetery maintenance districts, to "(1) adopt policies and procedures for the regulations of its affairs and the conduct of its business, including policies and procedures for the following: (a) setting of prices and other charges for services; (b) sale of burial rights; (c) regulation of headstones; (d) care of headstones; (e) regulation of flowers, shrubs, or other foliage placed or planted on an individual burial site; and (f) compliance with provisions of this title and other governing provisions of law; and (2) establish a record keeping system, including a secure backup of those records that is regularly updated." Any local district or special service district that operates a cemetery that does not have all of the required policies and procedures in place should correct the deficiency. The law doesn't mandate the content of your policies and procedures, but it does mandate that you have policies and procedures covering the enumerated subjects.

ELECTION LAW

H.B. 39 Election Law -- Independent Expenditures Amendments -- Sponsor Douglas V. Sagers

This Bill requires a person to file an independent expenditure report with the chief election officer if the person spends more than $1,000, cumulatively, during an election cycle, advocating for the success or defeat of a candidate or ballot proposition if the person is not working in coordination with a specific candidate. The report, which is a public record, must be filed within 30 days after making the qualifying expenditure. The legislation is specifically aimed at "unaffiliated" political action committees and political issues committees. If a person does not comply, the chief election officer may issue a fine of up to $100 to an individual or $1,000 to an organization. See newly created Title 20A, Chapter 11, Part 17 of the Utah Code for specifics.

H.B. 156 Election Day Voter Registration Pilot Project -- Sponsor Rebecca Chavez-Houck

HB 156 amends the Election Code by establishing the Election Day Voter Registration Pilot Project to determine whether implementing election-day voter registration is advisable. The goal is to increase voter turnout. Between June 1, 2014 and January 1, 2017, any county or municipality may apply to the Lieutenant Governor's office to be a part of the pilot project. If a county or municipality is approved to participate in the pilot project, the County Clerk or Municipal Clerk must provide training for all poll workers on how to properly administer the pilot program. The Lieutenant Governor and each participating county and municipality must report to the Government Operations Interim Committee and the Legislative Management Committee by October 31st of each year the pilot project is in effect. Subject to "sunset" review, this Bill will automatically be repealed on January 1, 2017.

Because both HB 156 and SB 135 (see below) passed, language was included in HB 156 to coordinate the Bills. The substantive coordinating amendments mainly deal with late registration and a decrease in the number of days before an election when an unregistered voter must submit a voter registration form.

H.B. 379 Transparency of Ballot Propositions -- Sponsor Ryan D. Wilcox

This Bill enacts the Transparency of Ballot Propositions Act in Title 59, Chapter 1, Part 16 of the Utah Code. Whenever a property or sales tax increase or the issuance of bonds is placed on a ballot (a "ballot proposition"), an argument of up to 500 words may be prepared by the taxing entity in favor of the ballot proposition and a similar length argument against the proposition may be prepared by an eligible voter wishing to oppose ballot proposition. Each author of an argument, for or against the ballot proposition, will be given an opportunity to review the opposing argument and may submit a 250 word rebuttal argument. The arguments and rebuttals are to be placed on the Statewide Electronic Voter Information Website and on the taxing entity's public website (if there is one) for 30 consecutive days before the date of the election and, if the taxing entity publishes a newsletter or other periodical, the arguments and rebuttals must be published in the next scheduled newsletter or periodical published before the election date. A public meeting must be conducted following the guidelines found in Utah Code § 59-1-1605 to allow interested parties to present arguments in favor of or in opposition to the ballot proposition.

H.B. 394 Campaign Finance Reform -- Sponsor James A. Dunnigan

This Bill places new requirements on persons and entities that make campaign contributions, including in-kind contributions and loans to a candidate's campaign made by the candidate. The reports must disclose the identity of the final recipient of the contribution and the actual source of the contribution, as opposed to simply disclosing the transactional intermediary. It also provides specific requirements for financial disclosure forms and, in Utah Code Ann. § 20A-11-1605, establishes criminal and civil penalties for violations.

H.B. 408 Election Requirements Amendments -- Sponsor Kay J. Christofferson

HB 408 changes the requirements for write-in candidates. Instead of filing 30 days prior to an election, all write-in candidates must file no later than 60 days before the municipal or regular general election, as applicable. It will be necessary for a ballot to contain a blank for a write-in candidate only if a write-in candidate has qualified for the election. This Bill may make it easier to contract with the County Clerk to conduct a district election.

S.B. 11 Election Offenses Amendments -- Sponsor Margaret Dayton

SB 11 basically is a John Swallow Bill. It enacts Part 8 of Title 20A, Chapter 1 of the Utah Code, entitled "Civil Action for Election Code Violation". The Bill establishes procedures for a registered voter to file a verified petition alleging a violation of the Election Code. Unless there is a conflict within the Lieutenant Governor's office, the Lieutenant Governor will review the petition to determine whether a special investigation is necessary. If there is a conflict, the Attorney General, State Auditor, State Treasurer or Governor will be designated to review and process the petition. If the reviewing official determines that a special investigation is necessary, special counsel will be appointed to review the petition and evidence and report to the reviewing official, who may then direct the special counsel to bring a civil action against each defendant designated by the reviewing official. Remedies ordered by the court may include voiding an election, ousting and excluding a candidate from office, and the recovery of costs and attorneys fees from the person whose right to office is successfully contested.

S.B. 36 Voter Information Amendments -- Sponsor Karen Mayne

SB 36 amends the Election Code and the Government Records Access and Management Act respecting the disclosure, provision, or use of the list of registered voters or information in the list of registered voters. In particular, the Utah Election Registration Form will now specifically recognize that a person's drivers license or identification card number, social security card number, e-mail address and date of birth are private records and explains a person's right to apply to the Lieutenant Governor or County Clerk to have the person's entire voter registration record classified as private if releasing that information would likely put the voter, or a member of the voter's household, at risk of stalking or pose a risk to life or safety. However, a "qualified person", meaning a government official or employee, a health care provider, insurance company, financial institution, or political party, along with their respective employees or independent contractors, may obtain the voter's birth date. However, a qualified person may only use voter information to confirm identity; to prevent fraud, waste or abuse; or for political purposes. The Lieutenant Governor's Office or a County Clerk is to make a determination concerning whether the person is "qualified" to receive the requested private information. The media may also be privy to a voter's birth date to verify the identity of an individual. The new Utah Election Registration Form and the statutory protections, both civil and criminal, may be found in Utah Code Ann. § 20A-2-104. The wording found in the new form must be placed on all voter registration forms, including motor voter registration forms -- *I.d.* § 20A-2-108(2)(b)(vi) -- provisional ballots and change of residence forms to inform voters of their rights.

S.B. 90 Residency Amendments -- Sponsor Todd Weiler

This Bill clarifies that a person's principal place of residence, for purposes of voting and running for elected office in Utah, must be in the state and in the applicable voting precinct. A person who temporarily leaves the state for military or other temporary purposes, but has the intention of returning to maintain residency in the state or voting precinct, does not thereby lose his or her "resident" status. The key is the intent of the resident. A list of factors deemed to be relevant for an election officer or judge to determine the location of a person's principal place of residence may be found in Utah Code Ann. § 20A-2-105(4).

S.B. 116 Poll Worker Amendments -- Sponsor Margaret Dayton

This Bill makes technical changes including adding "a regular county election" to the definition of "local election". Utah Code Ann. § 20A-1-102(1). It also requires each county legislative body to provide poll workers and election judges for a statewide or county special election.

S.B. 135 Voter Registration Amendments -- Sponsor Scott K. Jenkins

Prior to the passage of this Bill, a voter who registered to vote 15 days before an election was eligible to vote on the day of the election at a voting precinct in the county, but could not vote using early voting, and a voter who registered 14 days or less before an election was ineligible to vote in the upcoming election. SB 135 allows an individual, who registers to vote in person or electronically less than 15 but 7 days or more before an upcoming election, to vote in the election, but such person may not vote using early voting. This Bill includes an exception to allow a provisional ballot to be counted with the absentee ballots and requires a County Clerk to accept a voter registration form as late as one day prior to an election if the registrant filled out and submitted a voter registration form to another person on time, but that person filed the voter registration form less than 8 days, but at least 1 day, before the election.

EMPLOYMENT

S.B. 22 Workforce Services Job Listing Amendments -- Sponsor Peter C. Knudson

This Bill requires all local government entities to advertise job openings on the state website maintained by the Department of Workforce Services. The UASD worked hard to successfully amend this Bill to exempt "in-house" promotions from the requirement that the job opening be advertised on the state website. The Bill originally required all governmental entities, including districts, to include a requirement in contracts and requests for proposals to obligate any private contractor that signs a contract with the entity to provide employment contact information to the Department of Workforce Services. UASD worked with the Utah Association of Counties, the Utah League of Cities and Towns, higher education and public education to limit that requirement to the State Division of Purchasing. The sponsor agreed to that limitation based upon an assurance that all concerned parties will work together over the interim to find a way to expand the role of the Department of Workforce Services to include private contractors doing business with local governmental entities. The Governor's office and the Bill sponsor want to provide employment opportunities to veterans. If your district feels strongly about this issue, please contact LeGrand Bitter to become part of the interim working group.

FINANCE

H.B. 381 Local Government Interfund Loans -- Sponsor John Knotwell

This Bill applies to interfund loans made by municipalities, counties and local districts. Many, if not most, local districts operate as "enterprise funds", and this Bill may not impact them. However, whenever a local district makes a loan from one of its funds to another of its funds, significant new requirements stated in Utah Code Ann. § 17B-1-626 must be followed, including a requirement that the terms and conditions of the loan be stated in writing, the repayment schedule may not exceed 10 years, and the interest rate must reflect the rate of potential gain if the funds had been deposited or invested. If the term of the loan is less than one year, the interest rate cannot be lower than the rate offered by the Public Treasurers' Investment Fund. An interfund loan may not be approved until after public notice has been given and a public hearing has been held. The notice and hearing requirements may be satisfied by including the loan in the district's original budget or in a budget amendment previously approved by the board of trustees for the current fiscal year. The above requirements do not apply if the interfund loan comes from the district's general fund or from a short-term advance from the district's cash and investment pool to an individual fund and is repaid by the end of the current fiscal year.

INTERLOCAL COOPERATION

H.B. 17 Interlocal Act Amendments -- Sponsor Johnny Anderson

Governmental entities may, by contract, create an interlocal entity by satisfying applicable requirements of the Interlocal Cooperation Act, Title 11, Chapter 13 of the Utah Code. The Central Valley Water Reclamation Facility in Salt Lake County, which owns and operates the largest wastewater treatment facility in the state, is a good example of an interlocal entity. Central Valley was formed by two municipalities and five improvement districts (the "member entities"). As originally introduced, H.B. 17 would have required an interlocal entity to follow the most restrictive laws governing any of its member entities. As a result of many meetings with the State Auditor's Office and the Bill sponsor, and hours of work by many people, including UASD (LeGrand Bitter and Heather Anderson) UAC (Adam Trupp), ULCT (Lincoln Shurtz) and Fred Finlinson representing Central Valley, the Bill was amended to take out the most restrictive language. In its final form, the Bill requires all interlocal entities to adopt bylaws, policies, and procedures, which has been optional in the past. Also, interlocal entities are now subject to all state laws that govern its member entities, unless the interlocal entity is expressly exempt. If a state law governing one member entity conflicts with a law that is applicable to another member entity, instead of being subject to the "most restrictive" law, the interlocal entity may select and comply with the governing statute that fits the best -- that makes the most sense.

By law, an interlocal entity may not provide any service or perform any function that each and every one of its member entities is not legally authorized to supply or perform. In large measure, HB 17 resulted from a fear of "mission creep" -- a fear that an interlocal entity might attempt to do something that one or more of its member entities is not authorized to do. Mission creep is illegal, and was illegal even before the passage of HB 17.

HB 17 has a delayed effective date of May 12, 2015 to allow interlocal entities to work together during the interim to agree to uniform fiscal procedures to be applicable to all interlocal entities. If interlocal entities are unable to agree on workable fiscal procedures, the State Auditor's Office may create very restrictive fiscal procedures for them. If you would like to be part of the discussion, contact UASD Executive Director LeGrand Bitter, or Van Christensen (vchristensen@utah.gov), who is heading this process for the State Auditor's Office.

LAND USE/GOVERNMENT TAKINGS

H.B. 25 Eminent Domain Amendments -- Sponsor Lee B. Perry

HB 25 is the result of a months-long collaborative effort led by Representative Perry and Brent Bateman, the Lead Attorney in the office of the Property Rights Ombudsman that included representatives of condemning authorities as well as property rights advocates. The law authorizes a private property owner to request a written advisory opinion from the office of the Property Rights Ombudsman to determine if a condemning entity has occupied the owner's property without a colorable (arguable) legal right. If so, and the condemning entity does not vacate the premises, it will constitute a taking without just compensation and, in addition to damages, attorneys fees may be awarded to the property owner if the condemning entity lacks a colorable claim or defense and the occupancy continues in disregard of the advisory opinion. Utah Code Ann. § 13-43-205(2). This Bill gives a property owner the option of mediation or arbitration of disputes. Any condemning entity that desires to exercise eminent domain must, as early in the negotiation process as practicable, but in no event later than 14 days before a final vote is taken to approve the filing of a condemnation action, provide to the property owner a detailed statement explaining the property owner's rights as specified in Utah Code Ann. § 78B-6-505(1)(b)(ii). Except when the period is shortened by a court order based upon exigent circumstances, the condemning authority must wait at least 30 days after providing the property owner statement before filing a legal action to acquire the property. *I.d.* § 78B-6-505(2) and (4).

H.B. 220 Land Use Amendments -- Sponsor Gage Froerer

Under HB 220, at least 10 calendar days before a plat may be vacated or amended, the county or municipal land use authority must notify each "affected entity" that provides service to an owner of land located within the plat that is to be vacated or amended. UASD worked hard to make sure the Bill was amended to add the defined term "affected entity", which specifically includes local and special service districts. Most often, plat map modifications and the vacating of plats have minimal impact on service providers. However, issues can arise when utility lines have been planned or, worse yet, when those facilities, including service stubs, have already been installed in the previously platted streets and utility corridors. With ten days notice, the service provider will have an opportunity to call to the attention of the land use authority issues such as the impact of relocating platted streets and lot lines on the ability of the service provider to efficiently provide service. Once a plat vacation or amendment is approved and recorded, the recorded document will supersede and replace a previously recorded plat of the same land. *See* Utah Code Ann. §§ 10-9a-608 and Section 17-27a-608.

H.J.R. 21 Joint Resolution on the Sovereign Character of PILT -- Payment in Lieu of Taxes -- Sponsor Ken Ivory

Since 1976, the federal government has made payments in lieu of taxes (PILT) to Utah counties, through the state, to compensate for federal lands not being on the property tax roles. A number of special service districts ultimately receive PILT funding for such things as roads. HJR 21 strongly urges Congress to fully and permanent fund PILT payments and demands, if Congress cannot or will not fully fund PILT at the full assessed value of similarly situated lands on a mandatory, permanent and perpetual basis, that Congress transfer title to federal public lands directly to the state of Utah.

<u>LIABILITY AND IMMUNITY</u>

S.B. 250 Public Duty Doctrine Amendments -- Sponsor Curtis S. Bramble

SB 250 provides that a "general duty that a government entity owes to the public does not create a specific duty to an individual member of the public, unless there is a special relationship between the governmental entity and the individual member of the public." Utah Code Ann. § 63G-7-202(5). This change in the law could provide some protection from frivolous lawsuits.

S.B. 267 Governmental Immunity Act Amendments -- Sponsor Todd Weiler

The plaintiffs bar, including attorneys who sue the state and local governments, have complained that it often is difficult to determine the identity of a governmental entity that is responsible for an alleged wrong and of the proper person to serve on behalf of that entity. Under the Governmental Immunity Act, if a written notice of claim is not properly served within one year after the cause of action arose, the claim is thereafter barred. SB 267 effectively gives a plaintiff 30 additional days within which to serve the proper governmental entity if the claimant can demonstrate that a claim was timely filed, within the last 30 days of the allowed one year period, with an incorrect governmental entity in the good faith belief that the claimant was filing the notice of claim with the correct governmental entity. Utah Code Ann. § 63G-7-401(8).

LOCAL AND SPECIAL SERVICE DISTRICTS

H.B. 340 Local District Boundary Adjustment -- Sponsor Jeremy A. Peterson

Utah Code Ann. § 17B-1-503 has, for some time, allowed a municipality and a local district whose boundaries adjoin or overlap to mutually adjust the boundary of the local district to include more or less of the municipality. HB 340 extends that authority to include the expansion area identified in the annexation policy plan adopted by a municipality under Utah Code Ann. § 10-2-401.5. Now, in addition to expanding or contracting the boundaries of a local district within an incorporated municipality, the municipality and the district may also modify the district's boundaries to include, or exclude, land identified in the municipality's annexation policy plan even though the area has not yet been annexed into the municipality. UASD worked to make sure that only a "friendly" boundary adjustment could occur and caused language to be added to the Bill to protect customers by requiring services to continue to be provided without interruption.

H.B. 382 Limited Purpose Local Government Entities Amendments -- Sponsor Brad Dee

Historically, the legislative body of a county, when an improvement district contains only unincorporated land (no portion of the district being located within a municipality), could elect at the time of creation of the district to be the initial board of trustees. This Bill clarifies that the county legislative body may make that election even if one or more of its members does not otherwise meet the residency requirement applicable to trustees. Utah Code Ann. § 17B-2a-404(3)(a)(i). The Bill also allows a county legislative body having appointment authority over an improvement district that is 100% unincorporated to appoint up to three of its members to the board of trustees provided that at least 35% of the residences within the district are seasonally occupied homes and there are at least two appointed board members who meet the residency and other requirements of Utah Code Ann. § 17B-1-302(1). *I.d.* § 17B-2a-404(3)(a)(iii) and (b). The Special Service District Act has long declared special service districts to be "a body corporate and politic with perpetual succession, separate and distinct from the county or municipality that creates it… [and] a quasi-municipal corporation". In case further clarification is merited, HB 382 adds that a special service district is "a political subdivision of the state". *I.d.* § 17D-1-103(1)(a).

H.B. 415 Local and Special District Election Amendments -- Sponsor Steve Eliason

Local district trustee elections, and elections for special service district administrative control board members who are elected rather than appointed, are held during odd numbered years in conjunction with the municipal general election. That election cycle may work well for districts that are located entirely within one or more municipalities, but not as well for districts that either contain no municipal areas or, perhaps more importantly, contain significant incorporated as well as unincorporated areas. During the municipal election cycle there is no election, other than the district election, in unincorporated areas. During the general election cycle on even numbered years, every area of the state is involved in an election. Particularly in those situations where a district contracts with the County Clerk to run the district's election, it may be more convenient and economical, and a greater voter turnout may be achieved, if the district's election is conducted in conjunction with the general election. HB 415 gives local districts and special service districts with elected board members the opportunity to hold their elections during even numbered years if they so choose. The Lieutenant Governor must approve the change, and may increase the length of a board member's term by one year to compensate for the change in the election year. There also is a procedure to switch back to holding elections during odd number years. In either instance, the Lieutenant Governor is the gate-keeper to make sure this doesn't become a mechanism for districts to avoid holding board member elections. The Lieutenant Governor will decide if the change is "beneficial, based on potential cost savings, a potential increase in voter turnout, or other material reason." Utah Code Ann. § 17B-1-306(13)(b). This change could benefit districts with residents in both unincorporated county areas and municipalities.

S.B. 51 Local Government Entities Amendments -- Sponsor Jerry W. Stevenson

SB 51 is UASD's "Cleanup Bill". Every year, the Association supports one or more Bills that address issues that are brought to our attention by member districts and others. Generally, the issues are non-controversial, and past Cleanup Bills have generally sailed through the legislative process with relative ease. Although ultimately successful, this year's Bill required compromise on one or two of the many issues covered in the Bill. Highlights of the Bill include: Local districts are given the same authority as counties to provide services, non-monetary assistance, and monetary assistance to a nonprofit entity provided that the local district board first determines that the district and its patrons will receive adequate consideration, monetary or non-monetary, in return. A new local district may not be created to provide the same service that a previously created local district is authorized to provide (as opposed to a service that is actually being provided) in a given area without first obtaining the existing district's consent. A realistic time frame for the process to appoint multi-county water conservancy district board members (who are appointed by the Governor with the consent of the Senate) is established, and the commencement date applicable to multi-county water conservancy district board members is modified to be consistent with the appointment process. A county or municipal legislative body with appointment authority may appoint one of its own members who meets applicable statutory board member qualification requirements to a board of trustees without advertising the board vacancy and accepting nominations. The respective roles of the County Clerk, the Local District Clerk, and the local district board of trustees in district trustee elections are clarified and the conduct of local district elections is harmonized with actual practice. A local district appointing authority is authorized to divide the area over which it has jurisdiction into divisions for purposes of representation on the local district board (statutory authority already exists to divide a local district into divisions for the election of board members). A local district or special service district with an annual operating budget of less than $250,000 is authorized to provide notice of its annual budget public hearing by mailing a written notice to each voter and posting the notice in three public places within the district (in lieu of publishing the notice in a newspaper). An elected board of trustees of an improvement district that does not include any incorporated (municipal) land may be converted by the county legislative body to an appointed board only when: the elected board has ceased to function, the terms of all of the elected board members have expired without the board having called an election, or the elected board unanimously adopts a resolution approving the change from an elected to an appointed board. The law is strengthened to assist the State Auditor in obtaining compliance with state laws and procedures in the budgeting, expenditure and financial reporting of public funds by governmental bodies or agencies that exclusively assess fees (as opposed to property taxes). The Bill includes a clarification that a county legislative body does not become the board of canvassers for a local district election merely by virtue of the fact that the County Clerk is conducting the election under a contract with the local district. The Bill also includes language acknowledging that all local districts enjoy the same protection from adverse possession as enjoyed by municipalities, counties and metropolitan water districts. Please refer to the enrolled copy of SB 51 for addition information concerning the above and numerous other changes to the laws governing local districts and special service districts.

PROCUREMENT

S.B. 179 Procurement Revisions -- Sponsor Scott K. Jenkins

SB 179 is the cumulation of a 3 year effort to re-write the Utah Procurement Code, and was one of the Association's highest priorities during this year's legislative session. The Bill was designed to accomplish two important goals: First, to adopt universal new procurement ethics requirements. Second, to correct and improve last year's major re-write of the Procurement Code. Over a period of more than 9 months, many people negotiated and crafted language to be incorporated into the final Bill. In spite of that collaborative effort, SB 179 was on life support at least twice in the waning days of the legislative session. In particular, the Utah Media Coalition expressed concerns relative to closed meeting and protected records provisions in the Bill and representatives of architects and engineers were concerned about provisions governing the procurement of their professional services, particularly relative to "design build" projects. SB179 was salvaged due to the efforts of many people, not the least of whom is LeGrand Bitter, without whose efforts SB 179 likely would have failed.

A detailed review of SB 179, a more than 150 page Bill, is not feasible in the space allotted. However, the high points include the repeal of a prohibition against a local government procuring construction using a design-build contract (local and special service districts and Salt Lake City, as a city of the first class, previously enjoyed a partial exemption from the prohibition). The list of purposes for which a public meeting may be closed now includes evaluation committee deliberations; deliberations by protest officers and procurement appeals panels; consideration of information that is designated as a trade secret; and discussion of information provided to the public body during the procurement process if the information may not, under the Utah Procurement Code, be disclosed to a member of the public or to a participant in the procurement process and "the public body needs to review or discuss the information in order to properly fulfill its role and responsibilities in the procurement process". *I.d.* §§ 52-4-205(1)(m), (n) and (o), 63G-6a-707(7) and -1702(7). Multiple references to "state" have been corrected to "procurement unit" to remove confusion when the procurement is being made by a procurement unit such as a school district, special service district or local district, rather than by a state agency. A head of a procurement unit, when involved in a debarment hearing, may now subpoena witnesses and documents for the hearing. *I.d.* § 63G-6a-904(1)(c). Procurement units are now "encouraged to establish standard contract clauses", where previously the establishment of standard contract clauses dealing with identified issues was mandatory. *I.d.* § 63G-6a-1202. The duties and authority of a protest officer, when dealing with a procurement protest, are strengthen and clarified. *I.d.* § 63G-6a-1603. Provisions governing the deposit of security required to be posted by anyone who appeals a procurement decision to a procurement appeals panel established by the Utah State Procurement Policy Board are clarified and made more explicit. *I.d.* § 63G-6a-1703.

The new procurement ethics provisions are found in Title 63G, Chapter 6a, Part 24. The enhanced ethical requirements, with potential criminal ramifications, solely apply to "contracted administration professionals", who are individuals who are not employees of the procurement unit but who assist the procurement unit in the development of a solicitation or grant, in conducting the procurement process, or in the supervision or oversite or the administration or management of a procurement contract or grant, and to "procurement professionals", who are employees of the procurement unit "who, by title or primary responsibility" have " procurement decision making authority" and are "assigned to be engaged in, or [are] engaged in: (A) the procurement process; or (B) the process of administrating a contract or grant, including enforcing contract or grant compliance, approving contract or grant payments, or approving contract or grant change orders or amendments". However, "any individual who, by title or primary responsibility, does not have procurement decision making authority", elected officials and members of governing bodies are excluded, along with procurement unit chief executives and their chief assistants or deputies if the chief executive, chief assistant or deputy "has a variety of duties and responsibilities beyond the management of the procurement process or the contract or grant administration process"; *I.d.* § 63G-6a-2402(1) and (9). It is likely that very few local districts or special service districts will have "procurement professionals" in their employ. However, <u>all</u> public officers and employees will continue to be subject to the requirements and prohibitions of the Utah Public Officers' and Employees' Ethics Act, Utah Code Ann. § 67-16-1, *et seq.* Private consultants involved in assisting procurement units in conducting procurements and managing contracts, and those districts believing that they may have a procurement professional on staff, should carefully review new Part 24 of the Procurement Code.

ALL LOCAL DISTRICTS AND SPECIAL SERVICE DISTRICTS ARE GOVERNED BY THE UTAH PROCUREMENT CODE AND, IF THEY DO NOT HAVE THEIR OWN PURCHASING RULES AND REGULATIONS IN PLACE BY JANUARY 1, 2015, THE STATE'S PURCHASING RULES WILL BE APPLICABLE. The Association will have a purchasing rule template available by no later than the annual UASD Convention in early November.

PROPERTY TAXES

S.B. 61 Revisions to Property Tax -- Sponsor Deidre M. Henderson

Calendar year taxing entities have historically been required to, in effect, hold two "truth in taxation" hearings -- one when the budget for the upcoming year is adopted in November or December and again in late spring when the property tax rate is formally established -- before adopting a tax rate that exceeds the certified tax rate. On the other hand, fiscal year (July 1 through June 30) entities are able to do everything at the same time, since both the annual budget and the property tax rate are finalized shortly prior to the start of the new fiscal year. The Utah Taxpayers Association raised the following concern, which was the subject of a number of meetings involving the Utah Association of Counties, the Utah League of Cities and Towns, the Utah Association of Special Districts and others: Residents appear at a truth in taxation hearing in June to learn that the tax rate increase was effectively approved the prior December when the budget was adopted. With almost one-half of the budget year having expired, and the taxing entity having incurred obligations and made expenditures based upon the approved budget, it is too late to do anything other than approve the tax increase. In response, SB 61 is primarily intended to require calendar year taxing entities to hold a meaningful truth in taxation public hearing before the budget is established, with enhanced public notice requirements. These requirements apply only when the taxing entity proposes to increase property tax revenues to a level that will require a property tax rate that exceeds the certified tax rate.

Specific new requirements include: Fourteen or more days before the date of the regular or municipal general election in any given calendar year, the calendar year taxing entity must declare at a public meeting that the entity intends to levy a tax rate that will exceed the certified tax rate, the dollar amount and purpose for the additional property tax revenue, and the approximate percentage increase in property tax revenue that will be received by the entity. Utah Code Ann. § 59-2-919(3)(a). Thereafter, the entity may not adopt a final budget that includes property tax revenue in excess of the maximum amount stated during that public meeting. *I.d.* § 59-2-919(9)(b). The taxing entity is also required, before October 1 of the current calendar year, to notify the county legislative body of the date, time and place of the first public hearing during which the entity's annual budget will be discussed *I.d.* § 59-2-919(8)(a)(ii). All districts that impose a property tax should consult Utah Code Sections 59-2-919 and 59-2-919.1, which have been extensively revised by SB 61, particularly regarding new notice and public hearing requirements. The bottom line is that calendar year fiscal entities must start working on their budgets and anticipated property tax needs earlier in order to meet new declaration and notice requirements. This Bill adds "red tape" to the process and may make it more expensive for a district to levy increased property taxes above the certified tax rate.

SB 61 also changes the requirements for calendar year taxing entities to impose a judgment levy. Under amended Utah Code Ann. § 59-2-918.5, a public hearing must be held on an eligible judgment issued between March 1st and September 15th at the same time as the hearing during which the annual budget is adopted. An eligible judgment issued between September 16th and the last day of February must be the subject of a public hearing at the same time as the hearing during which property tax levies are set.

S.B. 237 Urban Farming Amendments -- Sponsor J. Stuart Adams

This Bill modifies the Urban Farming Assessment Act to include land within a county of the second class that is at least 98% urban, as determined by the United States Census Bureau (the Act already applies to any county of the first class). This change provides a property tax break for small "urban farms" by allowing such land to be assessed under the Farmland Assessment Act. The Bill also changes the tax rollback period from 10 years to 5 years, thereby essentially cutting in half the "penalty" applicable when the land is taken out of agriculture.

PUBLIC MEETINGS

S.B. 113 Public Meeting Amendments -- Sponsor Karen Mayne

SB 113 defines the term "specified body" as meaning "an administrative, advisory, executive, or legislative body that: (a) is not a public body; (b) consists of three or more members; and (c) includes at least one member who is: (i) a legislator; and (ii) officially appointed to the body by the President of the Senate, Speaker of the House of Representatives, or governor." Utah Code Ann. § 52-4-103(13). The Bill requires a specified body to give not less than 24 hours' public notice of any meeting held on the Capitol Hill complex. *I.d.* § 52-4-202(1)(a)(ii). As originally drafted, SB 113 could have impacted any group meeting at the Capitol complex if a sitting legislator happened to be in attendance. SB 113 was amended at the request of the Association to narrow the focus of the Bill so it would only affect the intended groups.

UTILITIES

S.B. 52 Utility Relocation on Highway Projects -- Sponsor Kevin T. Van Tassell

Current law requires the Department of Transportation to pay 100% of the costs associated with relocating a government - owned utility to accommodate the construction, improvement, widening or modification of a state highway (UDOT also pays 100% of the cost of relocating a utility owned by a private concern that holds fee title to the right-of-way or owns an easement, and covers 50% of the cost of a privately owned utility when the utility line is not located in a separate easement or fee owned property). SB 52 clarifies that "a state highway project" includes "the construction of a proposed state highway and the improvement, widening, or modification of an existing state highway" and extends the 100% UDOT repayment commitment to include a "utility [which] is located in a public utility easement as defined in Section 54-3-27." Utah Code Ann. § 72-6-116(3)(a).

WATER

H.B. 29 County Recorder Index Amendments -- Sponsor R. Curt Webb

This Bill requires all County Recorders to maintain an index of water right numbers that are included on any document that is recorded on or after May 13, 2014.

H.B. 370 Canal Safety Amendments -- Sponsor Johnny Anderson

This Bill requires the State Engineer, by July 1, 2017, to inventory and maintain a list of all open, human-made canals and ditches ("canal") that carry 5 cubic feet per second or more. All owners of open canals that meet the 5 cfs requirement are required to inform the State Engineer if there is any change in the canal alignment, owner contact information, maximum flow capacity, use of the canal for flood or storm water management, or the applicable management plan. This Bill also authorizes the State Engineer to contract with local conservation districts created under Title 17D, Chapter 3 of the Utah Code to help maintain and inventory these canals and to provide technical support for a canal owner that is adopting a management plan. An effort was made to exempt all federal canals. However, the Bill was heard at the end of a two hour legislative committee meeting during which the majority of the time was devoted to complaining about the federal government. To enable the Bill to make it through the committee, the federal exemption amendment was dropped.

S.B. 17 Water and Irrigation Amendments -- Sponsor Margaret Dayton

This Bill expands the enforcement powers of the State Engineer. Among other things, the Bill mandates that any instrument transferring or assigning a water right must be recorded in the office of the applicable County Recorder (effectively changing a "may" to a "shall"). The Bill includes clarifying language respecting anyone engaged in well drilling without the proper license - - an offender is guilty of a crime ranging from a class A misdemeanor to a felony of the third degree based on criteria found in Utah Code Ann. § 73-2-27. The State Engineer is given authority to issue an order for the repair and restoration of the bed and banks of a natural stream channel that is altered contrary to, or without, a permit issued by the State Engineer for that purpose.

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