UTAH ASSOCIATION OF SPECIAL DISTRICTS

REVIEW OF SELECTED BILLS ADOPTED

BY THE 2012 UTAH STATE LEGISLATURE

PREPARED BY

MARK H. ANDERSON--GENERAL COUNSEL

and HEATHER ANDERSON--INTERN

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During the 2012 Legislative Session that concluded March 8th, the Utah Association of Special Districts monitored approximately 200 Bills and Legislative Resolutions. "H.B." stands for "House Bill" and "S.B." stands for "Senate Bill". Most of the Bills were "tracked" by the Association, meaning that the Association did not take a position on the Bill but, rather, monitored the Bill and, in a number of cases, actively worked to improve the Bill through amendment. 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. After that review, a number of Bills were "dropped" and were no longer followed by the Association. As the session progressed, Bills were amended and substitute Bills were introduced in place of the original Bills. As Bills were modified during the legislative process, the Association's position on some Bills became fluid, meaning that if a Bill was modified in a beneficial way the Association's position could change from opposed to track or even to support. Conversely, if a Bill was weakened or unpalatable provisions were added, a track position could change to oppose and a position of support could change to either track or oppose. By the end of the legislative session, the Association supported 40 Bills and opposed 8 Bills. Sixty-three percent (25) of the Bills supported by the Association passed and are scheduled to become law. On the other hand, only 2 Bills opposed by the Association (25%) passed. Most of the Bills have an effective date of May 8, 2012. Some Bills, however, provide for a different effective date, which may be reflected in the discussion which follows.

By the end of the session, the Association was actively following 150 Bills. This analysis covers 38 Bills, about 25% of the Bills that were followed by the Association. We have attempted to identify the Bills that may have the most significant application to local districts and special service districts. This analysis is not exhaustive, however, and there are a number of additional adopted Bills that may have an impact on your district. Since this analysis is intended only as a brief overview, the discussion of certain of the Bills may be oversimplified. If a Bill appears to apply to your district, you are encouraged to review the entire Bill and, if appropriate, to consult with your district's attorney as to its application and importance. The Association's final position on each Bill is indicated between parentheses on the title line after the name of the Bill sponsor.

Every legislative session seems to have a number of themes. The 2012 legislative session was no exception. The primary themes of the session seemed to be asserting the State's right to control federal lands, and education, including a controversial ban of comprehensive sex education in public schools that was vetoed by Governor Herbert. There also seemed to be an effort to undo some of the damage caused by the adoption of H.B. 477 during the 2011 legislative session. H.B. 477, among other things, would have deleted from the Government Records Access and Management Act "GRAMA" the presumption that government records are to be available to the public and have exempted legislators and legislative staff from the disclosure of certain records which, if held by a different governmental branch, might be subject to disclosure. Due to the backlash from the media and the public, H.B. 477 was subsequently repealed during a special session of the Legislature. During the 2012 session, if a Bill appeared to increase government transparency, particularly local government transparency, the Bill stood an excellent chance of passage.

Board Members:

<u>H.B 491 "MIDTERM VACANCY AMENDMENTS" by Representative John Dougall (Oppose)</u>

This Bill is specifically aimed at municipal and local school district board mid-term vacancies. However, it also amends the Open and Public Meetings Act by prohibiting both the discussion of filling a "mid-term vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5" of the Utah Code and discussing "the character, professional competence, or physical or mental health of the person whose name was submitted for consideration to fill a mid-term vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5" of the Utah Code. Utah Code § 52-4-205(3)(b)and (c). There already is a prohibition in the Code precluding a public body from interviewing a person applying to fill an elected position, such as an elected local district trustee or special service district administrative control board member, in a closed meeting. *Id.* § 52-4-205(3)(a). Since the filling of local district and special service district mid-term board vacancies is governed by Utah Code § 20A-1-512, discussing a mid-term local or special service district board vacancy or the character of a person being considered to fill the vacancy in a closed meeting is now prohibited.

Bonding:

<u>S.B. 192 "BOND VALIDATION ACT AMENDMENTS" by Senator Benjamin M. McAdams (Support)</u>

S.B. 192 clarifies procedural provisions of the Utah Bond Validation Act. The trial court hearing a bond validation proceeding, to the extent possible and practicable, is required to make a final judgment on the validity of the subject bonds within 10 days after the hearing is concluded (*Id.* § 11-30-7(4)) and the Utah Supreme Court, when hearing an appeal of a bond validation judgment, is required to give priority to docketing and briefing of the appeal, not just to the hearing and the decision. (*Id.* § 11-30-10(3)).

<u>S.B. 193 "LOCAL GOVERNMENT BONDING ACT AMENDMENTS" by Senator Curtis S. Bramble (Support)</u>

Voter authorized general obligation bonds may be issued any time within ten years after the bond election. S.B. 193 provides that the ten year period is "tolled" (put on hold) if the bonds are challenged by a referendum petition or in a court of law or an administrative proceeding. If there is less than 1 year remaining on the time to issue a bond after the tolling period ends, the time to issue the bonds will be extended to one year. The tolling provision applies to bonds approved by the voters on or after May 8, 2002. *Id.* § 11-14-301(2).

Conservation Districts:

<u>S.B. 247 "CONSERVATION DISTRICT AMENDMENTS" by Senator David P. Hinkins" (Support)</u>

S.B. 247 applies by reference much of Title 17B, Chapter 1 of the Utah Code, which contains statutory procedures that generally are applicable to all local districts, to conservation districts, which are governed by Title 17D, Chapter 3 of the Utah Code. *Id.* § 17D-3-105. A member of the board of supervisors of a conservation district is required to complete specified training within one year after taking office. *Id.* § 17D-3-311(1).

Criminal:

<u>H.B. 297 "HIGHWAY BARRICADE AMENDMENTS" by Representative Lee B. Perry (Support)</u>

This Bill makes it a class B misdemeanor to willfully fail to observe any temporary or permanent barricade, warning light, sign, cone or other object used in accordance with Utah Code § 72-6-114.

<u>S.B. 195 "TRANSPORTATION SAFETY REVISIONS" by Senator Karen Mayne (Support)</u>

This Bill makes it illegal to make a U-turn between the warning signs where a railroad track and roadway intersect. *Id.* § 41-6a-802(2)(c). Section 41-6a-1005 sets limitations for pedestrians in relationship to railroad crossings and railroad tracks. Neither a person nor a non-rail vehicle may cross a gate or barrier or ignore a signal that a railroad crossing is active. A person who recklessly endangers others or causes monetary damages may be charged with "criminal mischief". *Id.* § 76-6-106.

Elections:

<u>H.B. 172 "VOTE BY MAIL AMENDMENTS" by Representative Steve Eliason (Track)</u>

Specific statutory authority for districts to conduct elections entirely by mail is repealed, but H.B. 172 extends that authority to any governmental entity conducting an election. The procedure to be followed in conducting an entire election by absentee ballot is found in Utah Code § 20A-3-302. In consultation with other election officers, the Lieutenant Governor is required to study how to move to vote by mail elections, not only for districts but also for the state, counties, municipalities and other entities holding elections. The Lieutenant Governor is to report on the progress of the study to the Government Operations Interim Committee before September 30, 2012, with further status reports due before September 30 in 2013 and 2014. *Id.* § 20A-5-410. This Bill has an immediate effective date.

<u>H.B. 253 "VOTER REGISTRATION AMENDMENTS" by Representative Kraig Powell (Track)</u>

This Bill amends provisions in the Election Code, found in Title 20A of the Utah Code. If a voter does not vote in two consecutive general elections, the county clerk must mail a preaddressed form to the voter to verify if the voter still resides at the address stated on the voter registration. *Id.* § 20A-2-304.5(3). The county clerk "shall" (replaces "may") remove a voter from the official register if the voter is deceased, changes address, fails to confirm the voter's address to the county clerk after the clerk has sent the statutorily required notice to the voter and the voter has failed to vote in a regular general election after the date of the notice (making three consecutive missed elections), or is convicted of a felony or misdemeanor that would prohibit the individual from voting as provided in Sections 20A-2-101.3 or 20A-2-101.5, or the clerk receives notice that the voter has subsequently registered to vote in another state. *Id.* § 20A-2-305.

H.B. 339 "ELECTION BALLOT AMENDMENTS" by Representative Steve Eliason (Oppose)

If a district decides to hold a board election entirely by absentee ballot, S.B. 339 mandates that a business reply mail envelope (prepaid preaddressed) be provided to every registered voter eligible to vote in the election. *Id.* § 20A-3-302.5(3)(c). Due to the increased cost to districts of mailing prepaid absentee ballots, the Association opposed the Bill. Utah Code § 20A-3-305(1)(b) now requires an election officer to mail a postage paid absentee ballot "to all absentee voters, other than to a uniformed-service voter or an overseas voter," 28 days before the election day. An election officer must notify a voter if the voter's ballot is rejected, including the reason for the rejection, within 7 days after the election day if the ballot is received before the election day or within 7 days after the date of the canvas if the ballot is received after the election day but before the end of the canvas. *Id.* § 20A-3-308(5).

H.B. 488 "WORDING ON ELECTION BALLOTS" by Representative Evan J. Vickers (Track)

This Bill amends a number of Sections in Title 20A, Chapter 6, Ballot Form, changing voting instructions on a ballot for an office to which more than one person may be elected to read "Vote for up to (the number of candidates for which the voter may vote)."

H.B. 493 "CAMPAIGN FINANCE DISCLOSURE AMENDMENTS" by Representative Kraig Powell (Track)

This Bill requires any candidate for a municipal office or a county office who receives a campaign contribution to deposit the contribution in a separate account designated for campaign contributions only and prohibits depositing or mingling campaign contributions in a personal or business account. The Bill also itemizes information that must be included in a campaign financial statement filed by a municipal office candidate or a county office candidate, including any contribution deposited in a campaign contribution account or any expenditure from the account that has not been reported since the last campaign finance statement was filed. It may be argued that these requirements do not apply to local district or special service district candidates because neither a "municipal office" nor a "county office" is being sought. However, local and special service district elections are held as part of the municipal election. Prudence and common sense dictates that these requirements should be followed by any district candidate who receives campaign contributions. Municipal elections are governed by Utah Code § 10-3-208(2) and (3) and county elections are governed by § 17-16-6.5(3) and (6). The Bill includes similar provisions applicable to state office candidates (*Id.* § 20A-11-201(6), legislative office candidates (Id*. § 20A-11-301(6),* political action committees (*Id.* § 20A-1-602(4) political issues committees (*Id.* §20A-11-802(3), and school board candidates (*Id.* § 20A-11-1301(7)). H.B. 493 took effect upon the approval of the Governor.

S.B. 19 "VOTER INFORMATION PAMPHLETS" by Senator Peter Knudson (Support)

Under prior law, the governing body of a district holding a bond election that is expected to increase the property tax imposed upon an average residence by $15.00 or more per year was required to prepare and mail a voter information pamphlet to each household having at least one registered voter at least 7 but not more than

30 days before the bond election. S.B. 19 changes those requirements by allowing the mailing, at least 15 days but not more than 45 days before a bond election, of either a voter information pamphlet or a notice identifying the website on which the voter information pamphlet is available and a phone number that may be called to request delivery of a voter information pamphlet. The notice must be "printed on a postage prepaid, preaddressed return form that a person may use to request delivery of a voter information pamphlet by mail". *Id.* § 11-14-202(6). Similar requirements are applicable to both ballot propositions and voter information pamphlets. The Lt. Governor is authorized to "distribute a voter information pamphlet at a location frequented by a person who cannot easily access the Statewide Electronic Voter Information Website" and the Lt. Governor is required to "conduct a study to evaluate the effectiveness of the notice", with the results of the study to be provided to the Government Operations Interim Committee by October 1, 2013. *Id.* § 20A-7-702 (4) and (5).

Eminent Domain (Condemnation):

H.B. 74 "EMINENT DOMAIN AMENDMENTS" by Representative Michael E. Noel (Track)

H.B. 74 amends the Judicial Code to allow the use of eminent domain to take property for roads, railroads, tunnels, pipe and the like relating to the working of oil and gas deposits. Before the governing body takes a final vote to approve filing an eminent domain action, a political subdivision seeking to acquire property by eminent domain, including local and special service districts, must make a reasonable effort to negotiate the purchase of the property from the property owner and must advise the property owner of the owner's rights to mediation and arbitration under the Property Rights Ombudsman Act and provide to the property owner a written statement explaining that oral representations or promises made on behalf of the governmental entity are not binding. *Id. §* 78B-6-505(1). The same requirements are made applicable to a condemnor, other than a political subdivision of the state, by Utah Code § 78B-6-505(2). While these requirements are not new, they are clarified by H.B. 74.

Employees:

H.B. 22 "CENTRALIZED NEW HIRE REGISTRY ACT AMENDMENTS" by Representative Jeremy A. Peterson (Track)

For purposes of the Centralized New Hire Registry Act, this Bill defines "date of hire" as the "date labor or services for compensation are first performed by the employee" and "date of rehire" as the "date labor or services for compensation are first performed by an employee who was previously employed by the employer but has been separated from that employment for at least 60 consecutive days." *Id.* § 35A-7-102(3) and (4). According to Utah Code § 35A-7-104, an employer that hires or rehires an employee must send to the Department of Workforce Services the employee's name, address, Social Security number, and the date of hire or rehire (which is a new requirement) no later than 20 days after the hire/rehire date. The effective date of H.B. 22 is July 1, 2012.

H.B. 256 "RETIREMENT MODIFICATIONS" by Representative Don. L. Ipson (Track)

This Bill modifies the Utah State Retirement and Insurance Benefit Act. The Bill clarifies post retirement employment provisions applicable to a covered employee who returns to work within one year of retirement or who elects to earn additional service credit. In particular, new language provides: "(c) if the retiree is not otherwise eligible for retirement coverage in the reemployed position: (i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i) [which mandates the cancellation of the retirement allowance of a reemployed retiree who is reemployed within one year of retirement, with certain exceptions]; and (ii) the participating employer shall pay the amortization rate to the office on behalf of the retiree." *Id.* § 49-11-505(7).

Under the Public Employees Long-Term Disability Program, an employee must bring a claim for long-term disability benefits within 6 months (changed from 1 year), from the date of disability unless the office finds mitigating circumstances that justify the delay. *Id.* § 49-21-401(10). In another change, a monthly disability benefit may be terminated unless "the eligible employee provides the information and documentation requested by the" Utah State Retirement Office. *Id.* § 49-21-402(1)(b). Current law provides that a monthly disability benefit is to be reduced or reimbursed for amounts received by the eligible party from specified sources such as social security disability benefits, unemployment benefits, etc. That list has been expanded to include "any payments made for sick leave, annual leave, or similar payments." *Id.* § 49-21-402(2)(g).

Utah Code § 49-22-202(2) identifies governmental employers that may be excluded from participation in the State Retirement System. However, if an excluded governmental employer "elects at any time to provide or participate in any type of public or private retirement, supplemental or defined contribution plan, either directly or indirectly, except for Social Security, the employer shall be a participating employer in this system regardless of whether the employer has applied for admission". *Id.* § 49-22-202(3). Generally, a covered employee does not "vest" in the Retirement System until the employee has accrued four years of employment as a regular full-time employee. However, upon filing a written request for exemption with the Utah State Retirement office, designated employees are exempt from that vesting requirement, including "a person appointed as a city manager or appointed as a city administrator or another at-will employee of a municipality, county, or other political subdivision" such as a local district or special service district. *Id.* § 49-22-401(3)(c)(x). At least one regular full-time employee may receive such an exemption, but no "more than 50 positions or a number equal to 10% of the employees of the … political subdivision, whichever is less" may receive the exemption. *Id.* § 49-22-401(3)(e). The participating employer is required annually to file each employee exemption with the State Retirement Office.

S.B. 98 "AMENDMENTS TO PROHIBITION ON USING HANDHELD WIRELESS COMMUNICATION DEVICE WHILE OPERATING A VEHICLE" by Senator Lyle W. Hillyard (Track)

S.B. 98 essentially prohibits the operator of a motor vehicle on a highway in the State of Utah from using a handheld wireless communication device for anything other than a conversation or navigation. Text messages, emails, manually entering data into the device, sending data, reading text, and viewing images on the device while driving are prohibited. Law enforcement officers and emergency personnel are exempt from these restrictions if they are acting within the scope of their duties. If found in violation of this section, a person is guilty of a Class C Misdemeanor, or a Class B Misdemeanor if serious bodily injury results from a driver using a wireless communication device or if the driver has a prior conviction under Utah Code § 41-6a-1716 within three years of the current conviction. In addition, the misuse of a handheld wireless device may serve as a basis for charging criminal homicide, a second degree felony. *Id.* § 76-5-207.5. All district employees who operate motor vehicles should be instructed regarding these requirements.

Environment:

S.B. 11 "DEPARTMENT OF ENVIRONMENTAL QUALITY BOARDS ADJUDICATIVE PROCEEDINGS" by Senator Margaret Dayton (Support)

State-wide, a substantial number of districts operate under permits issued by the Utah Department of Environmental Quality ("DEQ"). In particular, districts providing sewage treatment and disposal services are required to possess discharge permits issued by the DEQ. These permits are often challenged, particularly by environmental groups. Prior to S.B. 11, these permit challenges were handled using a formal, trial-type review pursuant to the Utah Administrative Procedures Act, Title 63G, Chapter 4 of the Utah Code ("UAPA").

S.B. 11 establishes a new administrative procedure for review of environmental permits and licenses issued by the DEQ, including wastewater discharge permits. The new approach is similar to the approach currently utilized by the U.S. Environmental Protection Agency's Environmental Appeals Board ("EAB"), which is a less formal approach than that mandated by UAPA. However, the new approach is not a complete departure from UAPA. For example, anyone wishing to challenge a DEQ permit must still file a request for agency action and a petition to intervene into the permit proceeding. Perhaps the most significant change is that the permit challenger is now required to raise issues and arguments up front, during the public comment period. If the permit challenger fails to raise an issue during the comment period, there is some latitude for the Administrative Law Judge to allow the record to be supplemented, but that appears to be a relatively small window of opportunity. An Administrative Law Judge will hear the permit appeal based on the administrative record developed during the DEQ permit application process. The parties have the right to file a motion to dismiss or a motion for summary judgment to obtain an expedited disposition on appeals that appear to be clear-cut. Generally, briefs will be filed and an oral argument will be held before the Administrative Law Judge. As provided in the coordinating clause applicable to S.B. 11 and S.B. 21 (which is found at the end of S.B. 21), a proposed dispositive order will be submitted to DEQ's Executive Director, who will adopt or modify the proposed order or remand the proposed order back to the Administrative Law Judge for further proceedings. Under the change in the law, DEQ permits generally will be operative when issued, but may be stayed by the Administrative Law Judge pending resolution of the administrative appeal based on the same factors as are used by Utah courts when issuing injunctive relief. *Id.* § 19-1-301.5(15). DEQ is authorized to adopt rules to implement S.B. 11.

The goal of S.B. 11 appears to be to make the permit review process less formal and to force the parties to raise issues and concerns early, before the permit is even issued, so they can be addressed and resolved during the permit issuance process which, hopefully, will reduce the number of administrative permit reviews. There is a rebuttable presumption against supplementing the record with technical or factual information, but the presumption can be overcome based on good cause and in the interest of justice as necessary to resolve the issue.

The permit review adjudicative process is stated in Utah Code § 19-1-301.5, which includes detailed information on who may petition to intervene and how the administrative law judge will conduct a permit review adjudicative proceeding. A person who files a request for agency action has the burden of demonstrating that an issue or argument was properly raised during the public comment period. *Id.* § 19-1-301.5(10)(a). The administrative law judge will prepare written findings of fact, conclusions of law and a recommended order. A party may seek judicial review of the DEQ's final ruling by appealing to the Utah Court of Appeals in accordance with Utah Code §§ 63G-4-401, -403 and -405.

S.B. 21 "DEPARTMENT OF ENVIRONMENTAL QUALITY BOARDS REVISION" by Senator Margaret Dayton (Track)

This Bill reduces the number of members to nine on all five Department of Environmental Quality ("DEQ") Boards, including the Drinking Water Board (§ 19-4-103) and the Water Quality Board (§ 19-5-103) which are critical for water and sewer districts, respectively. The Executive Director of DEQ, or the Executive Director's designee, will serve on all of the Boards, but will only vote to break a tie, with the other eight members appointed by the Governor with the consent of the State Senate to represent impacted units of government, non-governmental organizations and the public. The Bill repeals the authority of the respective DEQ Boards to issue DEQ permits or to approve, disapprove or modify a proposed administrative law judge's decision on a permit appeal and, instead, vests that authority in the DEQ Executive Director and state staff. However, the Boards do maintain rule making authority.

Before this Bill, local and special service districts had one representative on the Water Quality Board and two representatives on the Drinking Water Board. With this change, districts have lost their dedicated seat on the Water Quality Board and one of two dedicated seats on the Drinking Water Board. The Drinking Water Board will now have one representative from an improvement district, a water conservancy district or a metropolitan water district, rather than two. *Id.*§ 19-4-103. The Governor may appoint two government representatives who do not represent the federal government to the Water Quality Board, but there is no guarantee that either position will be filled by a district representative as opposed to a municipal, county or other representative. The bulk of the Bill is takes effect on May 8, 2012, with part of the Bill to be effective on July 1, 2012.

Ethics:

S.B. 180 "POLITICAL SUBDIVISION ETHICS AMENDMENTS" by Senator Curtis S. Bramble (Track)

S.B. 180 enacts new Title 11, Chapter 49 of the Utah Code, thereby creating the Political Subdivision Ethics Review Commission (the "State Commission" or "Commission"). This Bill allows a political subdivision, such as a local district, a special service district or an interlocal cooperation entity, to create a Local Political Subdivision Ethics Commission (a "Local Ethics Commission"), and political subdivisions may join together through an interlocal agreement to create a Local Ethics Commission, to review complaints against a political subdivision's officer or employee. A "political subdivision employee" is defined very narrowly as the non-elected chief executive of the political subdivision, such as a city manager or a district general manager. *Id.* § 11-49-102(6)(a). In turn, a "political subdivision officer" is a person elected in a political subdivision who is subject to the Municipal Officer's Employee's Ethics Act, the Employees Disclosure Act, or the Utah Public Officer's and Employee's Ethics Act. *Id.* § 11-49-102(8)(a).

The Utah Public Officer's and Employee's Ethics Act is applicable to local and special service districts. Consequently, elected local district trustees and special service district administrative control board members, but not appointed trustees or board members, and the general manager, executive director, or equivalent, but not any other employee of the district, will be subject to the jurisdiction of the State Commission (if the district has not established its own Local Ethics Commission).

Ethics complaints may be sent to the established Local Ethics Commission or forwarded to the State Commission if a Local Ethics Commission has not been established. If the complaint is against a member of the Local Ethics Commission, the complaint must be forwarded to the State Commission. If a district does not create a Local Ethics Commission, all ethics complaints will be submitted to and heard by the State Commission, which is made up of 7 individuals appointed by the Governor with the advice and consent of the Senate. A retired state judge, a former mayor or municipal council member, a former member of a local board of education, two lay members, and two persons who formerly served as a municipal or county mayor, a municipal council member, a county commissioner, a special service district administrative control board member, a local district trustee or a retired state court judge are to be appointed to the State Commission. The former judges and officials may not have served in those capacities more recently than four years before the date of appointment to the State Commission. *Id.* § 11-49-201. Thus, while it is possible for a former member of the governing body of a local or special service district to serve on the State Commission, there is no guarantee that such will be the case.

If an allegation is being heard by a Local Ethics Commission, that complaint may not be brought before the State Commission. If the officer or employee who is the subject of the ethics complaint resigns, is terminated or is charged with a criminal violation, the Commission must dismiss the complaint (to the extent the ethics complaint is based on the alleged criminal violation). The Commission has the power to subpoena witnesses and require the production of evidence. If the Commission issues a subpoena, the person or entity to whom the subpoena is directed may appeal to the district court to quash or modify the subpoena. Any party aggrieved by the court's decision may appeal to the Utah Supreme Court. The complainants must pay their own attorney's fees. As long as the public officer or employee was acting in good faith, the political subdivision must cover legal defense costs, as provided in Utah Code § 63G-7-902.

Two or more registered voters may file a complaint against a district board member or chief executive if they reside in and/or pay fees or taxes to the district, and at least one of the complainants has actual knowledge of the facts and circumstances supporting the ethics violation allegations. A complaint may not be filed within 60 days of an election if the accused is running for an elected position, unless the accused is running unopposed. The requirements for filing a response to an ethics complaint are stated in Utah Code § 11-49-604.

The Commission may determine that no allegations were proved or, if an unethical practice was found by clear and convincing evidence to exist, the Commission may recommend censure, termination of the employee, removal from office or any other action of reprimand that the Commission deems appropriate. The political subdivision governing body must review the Commission's recommendations and "take further action in accordance with a political subdivision's governing ordinance, bylaws, or other applicable governing rule" but is not required to follow the Commission's recommendations. *Id.* § 11-49-706. If criminal allegations arise, the Commission may refer the matter to the county or district attorney having jurisdiction. This Bill takes effect on September 1, 2012.

The procedures and requirements of new Title 11, Chapter 49, of the Utah Code are extremely detailed and precise. The foregoing is intended to give the reader a "taste" of what the Bill is about. For details and specifics, however, the new law must carefully be reviewed in its entirety. Assuming that many jurisdictions may want responsibility for and control over ethics complaints against elected board members and the general manager or executive director, the Association is considering the preparation of sample rules and regulations to be adopted to establish and implement a Local Ethics Commission, as well as the preparation of a sample interlocal cooperation agreement that could be used by multiple political subdivisions to create a regional Local Ethics Commission. Districts having an interest in such form documents are encouraged to contact either the Association's Executive Director or General Counsel. Those contacts may influence whether the forms are created. As noted, the State Commission only has jurisdiction over elected trustees and administrative control board members and non-elected chief executives. The rules and regulations and interlocal agreements establishing Local Ethics Commissions could provide broader authority to encompass ethics complaints against all employees of the district and, possibly, appointed board members. On the other hand, it may be beneficial to take local politics and emotions out of Ethics Complaints and to minimize the cost to the local district or special service district by allowing the State Commission to handle the complaint.

Fire:

S.B. 38 "WILDLAND FIRE AMENDMENTS" by Senator Margaret Dayton (Track)

If a wildland fire is recklessly, negligently or intentionally caused or spread, the person responsible for the fire is liable for all costs incurred to suppress the fire, and a responding fire district may bring action under Utah Code § 65A-3-4, which is a new Code section, to recover those costs.

Government Records:

H.B. 118 "STORAGE OF ELECTRONIC STORAGE RECORDS" by Representative Bradley M. Daw (Track)

H.B. 118 repeals language governing the disclosure of electronic communications that have been in electronics storage for more than 180 days, and requires the issuance of a warrant as a precondition to the disclosure of an electronic communication that is in electronic storage in an electronic communication system, with no distinction based on the length of time the communication has been in storage. *Id.* § 77-23b-4.

S.B. 18 "GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT-VOTER REGISTRATION RECORDS" by Senator Margaret Dayton (Support)

This Bill amends the Government Records Access and Management Act (GRAMA) to classify a voter's email address on a voter registration record as a private record that is not subject to disclosure. *Id.* § 20A-2-302(1)(h)(iii).

S.B. 137 "FINANCIAL TRANSPARENCY WEBSITE" by Senator Wayne L. Niederhauser (Track)

Many local districts and special service districts have, by contract with other units of local government, created interlocal entities. A classic example is the Central Valley Water Reclamation Facility, which was created by two municipalities and five improvement districts to own and operate a regional sewage treatment plant. S.B. 137 requires interlocal entities to provide public financial information that is generated on or after the fiscal year beginning July 1, 2012, through the Utah Public Finance Website or the interlocal entity's own website with a link to the Utah Public Finance Website. *Id.* § 63A-3-405(3). Local and special service districts are already required to provide public financial information through the Utah Public Finance Website or on the entity's website with a link to the Utah Public Finance Website.

S.B. 177 "GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT AMENDMENTS" by Senator Curtis S. Bramble (Support)

As declared by the Salt Lake Tribune Editorial Board in a March 19, 2012 editorial: "What a difference a year, and a whole lot of work by a great many people, can make." After referring to last year's H.B. 477, "a stealth measure that leapt out in the closing days of the session and tore the heart out of the state's open-records act", the editorial declared this year's S.B.177, which "passed with minimal controversy and without a dissenting vote in either the House or the Senate, has earned [Senator] Bramble the Media Coalition's 2012 Shining Light Award." The editorial praised S.B. 177 for strengthening "Utah's commitment to open government, making it clear that records are presumed to be open absent limited circumstances." The editorial also praised the creation of "the position of open-records ombudsman, who will train public officials in their responsibilities and help individuals understand their rights."

As a result of S.B.177, online training courses will be provided for the records officers of all governmental entities, including districts, which must successfully be completed each year. *Id.* § 63G-2-108. The first online course will be developed and made available by January 1, 2013. *Id.* § 63A-12-110. The Bill also creates the position of "government records ombudsman" to "(b) serve as a resource for a person who is making or responding to a records request or filing an appeal relating to a records request; (c) upon request, attempt to mediate disputes between requestors and responders; and (d) on an annual basis, report to the Government Operations Political Subdivisions Interim Committee on the work performed by the government records ombudsman during the previous year." *Id.* § 63A-12-111(2).

The Bill reverses the presumption concerning the release to the public of certain private or protected records. Previously, the public interest in obtaining access had to outweigh the interest in shielding the record from disclosure. Now, when the public interest in obtaining access is greater than or equal to the interest favoring non-disclosure, the record is to be disclosed. *Id.* §§ 63G-2-201(5)(b)(ii), -202(7)(d) and (8)(a)(ii)(B),- 206(2)(a)(iii) and (6)(b)(i), -305(7)(a) and (8)(a), -401(6),- -403(11)(b), -404(8)(a),-405(1)(b) and -406. Records that fall under the attorney client privilege are protected if they are properly so classified by the governmental entity, as are "records prepared by or for an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial or administrative proceeding". *Id.* § 63G-2-305(16) and (17). A governmental entity has long been able to protect records that would reveal the entity's strategy in pending litigation. That protection has been extended to cover imminent, as well as pending, litigation. *Id.* § 63G-2-305(22)(b). However, records classified as protected for enforcement, audit, discipline, licensing, certification, or registration purposes; records that fall under the attorney client privilege or that are prepared in anticipation of litigation, including administrative proceedings; records dealing with collective bargaining or litigation strategy; and settlement negotiation records may be disclosed if the party seeking access to the records can prove, by a preponderance of the evidence, that the public interest in gaining access is greater than or equal to the interest of the governmental entity in restricting access. *Id.* § 63G-2-406(1). Records the disclosure of which would jeopardize the life or safety of an individual may be ordered to be disclosed "only if the

… party seeking disclosure … has established, by clear and convincing evidence, that the public interest favoring access is equal to or greater than the interest favoring restriction of access". *Id.* § 63-2-406(2).

A public employee who intentionally refuses to produce a record that the employee knows is required to be disclosed, and is not under appeal, may be guilty of a Class B Misdemeanor. *Id.* § 63G-2-801(3)(a) and (c). The charged public employee may, however, have a defense if the conduct was based on a good faith belief that the employee was acting in accordance with the requirements of law. *Id.* § 63G-2-801(1)(d) and (3)(b).

Health Care:

H.B. 512 "RURAL HEALTH CARE SPECIAL SERVICE DISTRICT RETIREMENT GRANT PROGRAM" by Representative Don L. Ipson (Support)

In an effort to promote health care in Utah's rural counties (third, fourth, fifth and sixth class counties), this Bill creates a grant program to assist rural county health care special service districts in meeting retirement liabilities. The Bill includes a non-lapsing $900,000 appropriation from the General Fund to fund the grant program. Utah Code § 26-9-5, which is entirely new, states the qualifications and requirements for a rural county health care special service district to be awarded the grant. The special service district must commit to provide matching funds equal to at least 40% of the amount of the grant. This Bill takes effect on July 1, 2012

Identification Numbers:

H.B. 19 "STATE ISSUED IDENTIFICATION NUMBERS" by Representative Wayne A. Harper (Track)

H.B. 19 enacts Title 63G, Chapter 15 of the Utah Code, the "State Issued Identification Number Act", which generally prohibits the state and political subdivisions such as local and special service districts, excluding the State Tax Commission, from using 9 digit personal identification numbers if the entity's information technology system is capable of using identification numbers that are not 9 digits or if the entity is undergoing a reprogramming or design change that is conducive to changing identification numbers to something other than 9 digits. A 9 digit identifier may be used if it: "(i) is a combination of letters and numbers, (ii) is the individual's Social Security number and the use of the Social Security number is necessary for the governmental entity; or (iii) is not the individual's Social Security number, but the governmental entity can take steps to ensure that the nine digit number is not an active Social Security number … assigned to another person." *Id. § 63G-15-201(2)(b).*

Invasive Species:

S.B. 61 "INVASIVE SPECIES AMENDMENTS" by Ralph Okerlund (Support)

S.B. 61 includes a rehabilitation area infested with an invasive species as a "project" for which funds in the Invasive Species Mitigation Account may be used in accordance with Utah Code § 4-2-8.7, appropriates $1,000,000 from the General Fund to the Invasive Species Mitigation Fund, and includes "political subdivisions" in the list of entities that qualify for the use of these funds. All local districts and special service districts are political subdivisions of the state of Utah.

Local and Special Service Districts:

<u>S.B. 150 "LOCAL AND SPECIAL SERVICE DISTRICT AMENDMENTS" by Senator Jerry Stevenson (Support)</u>

S.B. 150 is the Association's annual "clean-up" Bill. This Bill harmonizes previously inconsistent provisions that declared that the term of office of a local district trustee is to commence on January 1st or the first Monday in January, by uniformly providing that the term of a local district trustee is to commence on January 1st. S.B. 150 clarifies that, when an appointing authority such as a city council or county commission appoints one of its own members to be a local district trustee, the vacancy need not be advertised and other candidates need not be considered, but other requirement of Utah Code § 17B-1-304, such as four year terms and removal for cause, may be applicable. Prior law declares that early voting does not apply to district elections, which could present a problem if the county clerk, rather than the district itself, is conducting the election. With amendments to Utah Code §§ 17B-1-306(12) and 20A-3-605(1)(b), early voting will apply to local district elections <u>if</u> the board of trustees so elects.

The Bill also clarifies that real property withdrawn from a local district is subject to the payment of district taxes only if necessary to pay bonds issued by the local district before the withdrawal. In an effort to lower costs, local districts may now combine fee increase and budget public hearings and may issue a joint notice of the combined public hearings. *Id.* § 17B-1-609(2), (3) and (4). Irrigation district use charges, which are collected by the county treasurer after a notice has been provided to benefited landowners, will constitute a lien against the benefited land which will automatically be released upon payment. *Id.* § 17B-2a-506(3). Mosquito abatement district boards must consist of at least 5 members appointed by municipal and county governing bodies as provided in Utah Code § 17B-2a-704.

With certain exceptions for less densely populated areas, S.B. 150 prohibits a special service district administrative control board member from also being an employee of the special service district (this restriction already applies to local district trustees) by incorporating by reference Utah Code § 17B-1-311 as part of the Special Service District Act. *Id.* § 17D-1-106(1)(a). S.B. 150 also incorporates a portion of Utah Code § 17B-1-303 into the Special Service District Act, thereby clarifying the terms of special service district administrative control board members, the oath they are to take, and how mid-term vacancies may be created and filled. The Bill enables an owner of land, or an agent or officer of an owner of land, which is served by a special service district to qualify to be a member of the administrative control board if more than 50% of the residences are seasonally occupied homes. *Id*. § 17D-1-304(1)(iii). A similar provision is already applicable to local districts.

The forgoing is not an exhaustive list of clean-up items covered by S.B. 150, but highlights many of the principal changes and illustrates typical issues that are included in the annual clean-up Bill.

Municipal Incorporations:

<u>H.B. 502 "INCORPORATION AMENDMENTS" by Representative Melvin R. Brown (Track)</u>

Ordinarily, the Association would not follow or take a position on a Bill dealing with municipal incorporations. However, as originally worded, H.B. 502 potentially impacted districts by, among other things, eliminating the requirement that an incorporation feasibility study be conducted before a municipal incorporation could move forward. The Bill had a number of critics, particularly the Township Council and other township proponents, largely due to its retroactive application and to substantially relaxed thresholds and requirements applicable to a new municipal incorporation. The Bill went through several substitutions. In the third substitute, the requirement for a feasibility study was restored, but the scope and requirements of the study were changed dramatically, including the deletion of Utah Code § 10-2-106(4)(a) which listed elements to be considered in the study including "(v) the fiscal impact on unincorporated areas, other municipalities, local districts, special service districts, and other governmental entities in the county".

H.B. 502 states that the consultant for the feasibility study is to be chosen by the contact sponsor of the incorporation petition, rather than by the county legislative body as previously provided, unless the incorporation sponsor relinquishes this right to the county. *Id.* § 10-2-106(2). The "feasibility consultant" must be independent of the county or the sponsor of an incorporation petition. The feasibility study is no longer required to consider the history, geography, geology, and topography boundaries of and natural boundaries within the proposed incorporation area and the surrounding area; whether the proposed boundaries eliminate or create an unincorporated island or peninsula; and whether the proposed incorporation will hinder or prevent a future more logical and beneficial annexation by another municipality or a future and more logical and beneficial incorporation. The enrolled Bill does require that the feasibility study include the projected cost of government services over the next 5-years including: culinary water, secondary water, sewer, law enforcement, fire protection, roads and public works, garbage, weeds and government offices, and "the fiscal impact on unincorporated areas, other municipalities, local districts, special service districts, and other governmental agencies in the county." *Id.* § 10-2-106(4)(a)(vii).

These amendments to the final version of the Bill enabled the Association to switch from opposition to a track position even though the Bill, in other ways, lowers the bar for municipal incorporations. For example, incorporation petitions no longer must be signed by the owners of at least 1/3 of the total private land area within the area to be incorporated. Instead, to be sufficient, the incorporation petition need be signed by only 10% of the registered voters residing within the proposed incorporation area. *Id.* § 10-2-109(2)(a). Instead of a special election to determine whether the municipality will be incorporated, the proposition will be put to the voters residing within the proposed municipality at the next regular general election. *Id.* § 10-2-111. Similar provisions are applicable to the incorporation of either a city or a town.

For details on the steps the county legislative body must take if a petition for incorporation is certified by the county clerk, please refer to appropriate provisions in Title 10 Chapter 2, Part 1 of the Utah Code.

Procurement:

H.B. 131 "LIENS FOR PRECONSTRUCTION AND CONSTRUCTION WORK" by Representative Michael T. Morley (Track)

H.B. 131 is a 104 page Bill that effectively rewrites Utah's mechanic lien statutes. Much of the mechanic lien law of the state is not applicable to government construction projects, including those of a local district or a special service district. However, Title 38 Chapter 1b of the Utah Code entitled "Government Construction Projects" is specifically applicable to such projects, as are the definitions found in Utah Code § 38-1a-102 and provisions relative to the State Construction Registry (the "Registry") found in Title 38, Chapter 1a, Part 2 of the Utah Code.

Id. § 38-1a-103. Any district undertaking a construction project should be familiar with the requirements of those portions of the Utah Code.

No later than 15 days after the commencement of physical construction work the original contractor, the owner (the district) or the owner/builder is required to file a notice of commencement with the Registry including a unique project number or the lot or parcel number of each property included in the project, along with the name, address and e-mail address of the owner, the original contractor and the surety providing any payment bond for the project or, if there is no payment bond, a statement to that effect, and the address of the project property or the name and general description of the location of the project property if the property cannot be identified by an address. *Id. § 38-1b-201.* If a notice of commencement is not timely filed, protections that otherwise might be available to the governmental entity undertaking the construction project will not be available.

Generally, a subcontractor on a government project is required to file with the Registry a preliminary notice within 20 days after the subcontractor starts providing construction work to the project or, if the subcontractor's work commenced before the filing of a notice of commencement, within 20 days after the filing of the notice of commencement. If the preliminary notice is filed late, it becomes effective 5 days after the date of the filing. If the subcontractor fails to file a preliminary notice, or for the period before a late filed preliminary notice is effective, the subcontractor's claim is solely against the person or entity with which the subcontractor contracted. In other words, the subcontractor cannot make a direct claim against the governmental sponsor of the construction project should the general contractor fail to pay and may not claim a construction lien against the project area. The burden to prove compliance with the statutory preliminary notice requirement falls upon the subcontractor. *Id.* § 38-1b-202.

Utah Code § 38-1b-203 incorporates by reference the notice of intent to obtain final completion and notice of completion requirements of Utah Code §§ 38-1a-506 and -507 to all government construction projects. Under Utah Code § 38-1a-506, at least 45 days before a notice of completion is filed or could be filed, the project owner (the district) or the original contractor is required to file with the Registry a notice of intent to obtain final completion if the performance time under the original construction contract is greater than 120 days, the contract price exceeds $500,000 and the original contractor or the owner has not obtained a payment bond in accordance with Utah Code § 14-2-1. Any local district or special service district finding itself in that situation should carefully review the requirements of Utah Code § 38-1a-506, particularly relative to the provision of "adequate assurance" to anyone who provides construction work on the project who so demands. The filing with the Registry of a notice of completion is governed by Utah Code § 38-1a-507.

H.B. 503 "CONSTRUCTION AMENDMENTS" by Representative Michael T. Morley (Track)

As originally introduced, H. B. 503 prohibited government entities, other than the Division of Facilities Construction and Management and the Utah Department of Transportation, from using a construction manager/general contractor or a design-build method of contracting, a major step in the wrong direction. Under current law, construction manager/general contractor contracts may be used by local districts and special service districts whenever it is in their best interest to do so and design-build contracts are legal for public works projects costing $10,000,000 or more (a concession that was gained just last year *See Id.* § 11-39-107(3)).

In its final form, those prohibitions were removed from H.B. 503, and the Association dropped its opposition to the Bill. The final version of the Bill does impact districts, but not in a negative way. For example, Utah Code §§ 14-1-19(4), 14-2-1(8), 38-1-41 and 63G-6-506.5 declare that, unless otherwise specified in the contract between the government and the person demanding payment from the government, the interest rate applicable to a bond or lien claim is the statutory rate prescribed in Utah Code § 15-1-1(2). The Bill also clarifies that "[a] design-build contract or a construction manager/general contractor contract may include provision by the contractor of operations, maintenance, or financing." *Id.* § 63G-6-501(4). Section 63G-6-601(6) requires a construction contract entered into by a public procurement unit (which includes local districts and special service districts) to contain "a clause that addresses the rights of the parties when, after the contract is executed, site conditions are discovered that: (a) the contractor did not know existed, and should not have known existed, at the time that the contract was executed and (b) materially impacts the costs of construction."

S.B. 114 "CONTESTING PUBLIC PROCUREMENTS" by Senator Wayne L. Niederhauser (Track)

S.B. 114 increases the number of members of the Procurement Policy Board from 10 to 15, including two representatives of local districts or special service districts appointed by the Utah Association of Special Districts. Under S.B. 114, procurement protests brought by an unsuccessful bidder or other aggrieved party will first be considered by the involved public entity—in the case of a district the protest will be heard by the purchasing officer or the governing body or a designee of either—but any appeal of the public entity's decision will be heard by a procurement appeals panel consisting of an odd number of at least three members of the Procurement Policy Board (or an approved designee of a member) appointed by the chair of the Procurement Policy Board or a designee of the chair. If the protest or appeal relates to a federal grant, federal assistance or federal contract funds, the person who hears the appeal must follow applicable federal law and regulations relating to the expenditure.

If a protest is filed under Section 63G-6-801 or an appeal is filed under Section 63G-6-807 of the Utah Code, a local public procurement unit, such as a local district or a special service district, may not further solicit or award a contract until all administrative and judicial remedies have been exhausted unless the local public procurement unit, after consulting with its attorney, "makes a written determination that award of the contract without delay is necessary to protect substantial interests of the local public procurement unit". *Id.* § 63G-6-802(2)(c). A decision of the procurement appeals panel may be appealed to the Utah Court of Appeals, provided that the appeal is filed within seven days after the panel issues its decision. *Id.* § 63G-6-815(1). In the event of an appeal to the Utah Court of Appeals, or any appeal to a higher court than the district court, the local public procurement unit may proceed with the solicitation or award even though the appeal is pending when "the local public procurement unit, after consulting with the attorney for the local public procurement unit, makes a written determination that award of the contract without delay is necessary to protect the best interest of the local public procurement unit." *Id.* § 63G-6-802(3)(c).

A protest officer may hold a hearing, subpoena witnesses and compel their testimony, and subpoena documents. The Rules of Evidence do not apply to a protest hearing. All records from the protest hearing must be preserved until the ruling is final. The protest officer is to issue a decision within 30 days after receipt of a written request for a formal decision and the written decision must immediately be furnished to the protestor. The decision of the protest officer generally must be upheld unless it is arbitrary and capricious or clearly erroneous. *Id.* § 63G-6-806(6). Subject to exceptions, Utah Code § 63G-6-807.5 requires a protestor who files an appeal with the Procurement Policy Board to pay a security deposit or provide a bond. If the person who files the appeal fails to prevail on the appeal and the panel finds that the protest or appeal was frivolous or was primarily meant to harass or cause delay, the bond or deposit is to be forfeited to the State General Fund.

Once the procurement appeals panel has made a decision, that decision may not be overturned by the Utah Court of Appeals unless the determination is "arbitrary and capricious or clearly erroneous," *Id.* § 63G-6-813. Utah Code § 63G-6-819(2) states: "Under no circumstances is a person entitled to consequential damages in relation to a solicitation or award of a contract under this chapter, including consequential damages for lost profits, loss of business opportunities, or damage to reputation."

The Association was actively involved in amending and improving this very complex legislation. All districts are strongly encouraged to obtain a copy of S.B. 114, review it carefully, and contact the Association with questions and comments.

S.B. 153 "PROCUREMENT AMENDMENTS" by Senator Wayne L. Niederhauser (Track)

This 329 page Bill represents a significant start to rewriting the Utah Procurement Code, which is now found in Title 63G Chapter 6. The new Procurement Code will be found in Title 63G, Chapter 6a, of the Utah Code. Kent Beers, Executive Director of the Division of Purchasing and General Services, would like to see more consistency in legal requirements applicable to governmental purchases at all levels, and would also like procurement law to be more user friendly.

As originally drafted, the Bill would have placed local district and special service district procurements under the jurisdiction of the Executive Director of the Division of Purchasing and General Services, which was never intended, and included other "quirks", which the sponsor, the Office of Legislative Research and General Counsel, and Mr. Beers were amenable to curing. Only designated portions of the current Procurement Code apply to local public procurement units such as local districts and special service districts. S.B. 153 purports to apply the entirety of the updated Procurement Code to local public procurement units. The Association contends that certain portions of the Procurement Code ought not apply to local districts and special service districts. However, there was not enough time during the legislative session to reach a consensus on which sections should, and should not, apply to local public procurement units. Consequently, the Bill has a delayed effective date of May 1, 2013 to allow time to work out those issues and other concerns. That will enable the Legislature to consider a Bill to improve the Procurement Code next year before the newly adopted Procurement Code takes effect.

It is anticipated that modernizing the Procurement Code will be a three year effort, which will be completed in 2014. The Association is forming a working group to review S.B. 114 and S.B. 153 and make recommendations for consideration by the stakeholders and, ultimately, by the Legislature. Anyone interested in participating in the working group should contact LeGrand Bitter, Executive Director of the Association, as soon as possible. The working group is expected to hold its first meeting in May and will likely wrap up its efforts by early summer.

Property Taxes:

S.B. 58 "PROPERTY TAX VALUATION AMENDMENTS" by Senator Wayne L. Niederhauser (Track)

While not all districts assess property taxes, many do. S.B. 58 addresses the assessment of the fair market value of property for purposes of taxation. If, as a result of the final determination on a property owner's appeal of his property's assessed fair market value, the value is reduced, when assessing the fair market value of the subject property the county assessor must take into consideration "(a) any additional information about the property that was previously unknown or unaccounted for by the assessor that is made known on appeal; and (b) whether the reasons for the valuation reduction continue to influence the fair market value of the property." *Id.* § 59-2-301.4(2). A determined decrease in the value of taxable property may impact taxes received by districts. The "value reduction" may relate back to "three years before January 1 of the year in which the property is being assessed." *Id.* § 59-2-301.4(1)(a). This Bill takes effect on January 1, 2013.

S.B. 78 "WATER CONSERVANCY DISTRICT AMENDMENTS" by Senator John L. Valentine (Track)

S.B. 78 began its life as a Bill that would have repealed the taxing authority of the Jordan Valley Water Conservancy District, the Washington County Water Conservancy District and the Roy Water Conservancy District. Thanks in large measure to the efforts of Chris and Fred Finlinson, as finally passed by the Legislature, S.B. 78 directs the 2012 Revenue and Taxation Interim Committee to conduct a study of the proper allocation of water costs to the rate structure charged for water customers. The study will include: the allocation of water conservancy district infrastructure repair and replacement costs, the proper method of financing water infrastructure, funding federal mitigation requirements, impact and hook-up fees, the advisability of setting up a sinking fund to pay for future infrastructure, how to charge for the delivery and acquisition of water, the need for and efficiency of various water conservation programs, best practices of other states relating to water projects, and the role of conservation in water pricing and providing adequate future water supplies.

All local districts and special service districts that provide water service, whether culinary or secondary, not just water conservancy districts, should pay close attention to this interim committee study. The scope of the study could expand beyond water conservancy districts and, even if the scope does not expand, water conservancy districts develop and provide a very significant portion of the water consumed in the state of Utah. If the ability of water conservancy districts to fund certain aspects of their operations is eroded, particularly the development of water supplies and providing infrastructure needed for future growth, that revenue shortfall will be covered by extreme rate hikes paid by current water users at all levels. Many consider it to be unfair for current water users, who require neither additional water supplies nor new infrastructure to deliver those water supplies, to bear the full brunt of the cost of making water available for land to be developed in the future. Some contend that impact fees, which are paid as a condition of development approval, can and should fund those costs. The reality, however, may be that impact fee collections are not sufficiently certain to cover bonded debt repayment. Water development projects tend to be massive, with the Central Utah Project as a classic example, and they must precede by years, if not decades, the developments they are intended to serve. In the meantime, annual bond repayments are required. Under certain circumstances, property taxes may be the only contribution toward water supply development costs made for benefited lands that will not be developed until after the bonded debt has been repaid. Property taxes can fully fund voter approved bonds and taxes can help cover operation and maintenance costs of the water district, especially in the years before the district has a substantial customer base. This may be a particularly important issue as we confront Utah's future.

<u>S.B. 272 "PROPERTY TAX RATE AMENDMENTS" by Senator Benjamin M. McAdams (Support)</u>

In determining a taxing entity's certified tax rate, redemptions (late payments of property taxes that were due during prior years) must be deducted, using a 5 year rolling average of redemptions, from the current year's property tax receipts. S.B. 272 provides some relief to a taxing entity in a year when redemptions are abnormally high by allowing a taxing entity that receives redemptions during any calendar year that exceed 3 times the amount of the 5 year average of redemptions to, for purposes of calculating the 5 year redemption average, use 3 times the 5 year average as the redemption amount for that year and spread the excess amount of the current year's redemptions out over the next 4 years.

To illustrate, assume that redemptions stay constant at $1,000 per year for 4 years. Then, in the fifth year, redemptions total $7,000 (because the economy tanked and a number of property owners paid their taxes late). The calculation would be: $11,000 divided by 5 = $2,200 times 3 = $6,600. Then, a new 5 year average would be calculated using $6,600 in place of $7,000 for the fifth year: $10,600 divided by 5 - $2,120, which would be used in place of $2,200 as the amount by which the taxing entity's property tax revenues budgeted for the next year would be decreased and, in turn, $100 ($7,000 - $6,600 = $400 divided by 4 = $100) would be added to the amount of redemptions received by the taxing entity during each of the next 4 years. Small numbers are used for simplicity of illustration. If several zeros are added, the resulting impact on the certified tax rate could be significant. For specific instructions on qualifying redemption amounts, see Utah Code § 59-2-924(3)(c)(ix)and(x). This Bill has retrospective operation to January 1, 2012.

Water:

<u>H.B. 485 "CHANGE APPLICATION AMENDMENTS" by Representative Ryan D. Wilcox (Support)</u>

This Bill only applies to federal water projects. It requires the local water users organization that is contractually responsible for the operation and maintenance of the project or the repayment of project costs (the project sponsor), and the record owner of the water right (the federal government) to jointly apply for a change application that is necessary for a federal project. *Id.* § 73-3-3(2)(c).

A number of important water related Bills were discussed during the session, but ran out of time or ran into too much opposition and failed to become law. None of the water rights Bills that passed appear to have a significant impact on local districts or special service districts. However, it is anticipated that a number of Bills with substantial impact will be discussed over the interim and may be introduced in 2013. H.B. 485 is included primarily to provide a little "flavor" of the types of water related Bills that managed to pass this year, even though it is limited to federal reclamation project water rights. H.B. 153, which allows the state engineer to reinstate lapsed small exchange applications, primarily for recreational cabins, or S.B. 134 which, as described by Fred Finlinson "changed the Water Development Commission into a Legislative Water Task Force by increasing the number of Legislators on the Commission and taking away the vote of the non-legislative members already on the Commission", are also representative of this year's crop of successful water related Bills. Anyone wishing details concerning any of the water Bills, both those that passed and those that did not, should contact Mr.

Finlinson, who published a Legislative Report for the Utah Water Coalition each week during the legislative session.

INTERIM STUDY:

S.J.R. 3 "JOINT RESOLUTION - MASTER STUDY" by Senator Scott K. Jenkins (Track)

A number of issues of importance to the Association and its members are slated for possible interim study, including four retirement issues, four election issues, three water issues, one procurement issue and one taxing authority question. One Hundred Seventy Four items are listed for possible interim study. While most of the interim study items are expected to have little if any direct impact on districts, many of them may be critical. After studying an issue, Interim Committees of the Legislature often promulgate Bills which are submitted to the full Legislature for consideration as "Committee Bills". Committee Bills typically are considered to have been fully vetted and almost always pass with relative ease and become law. If the Association and its members are not actively involved in the interim process, a Committee Bill may not take into consideration local district and special service district concerns. When concerns about a Committee Bill are raised for the first time during the 45 day legislative session, it may be difficult to get a fair hearing of those concerns. The question is always asked "where were you during the interim process?" -- and that can be a difficult question to answer. Consequently, the Association and its representatives will be actively engaged in the interim study process, starting almost immediately.