

**MINUTES OF THE
SPECIAL DISTRICTS RECODIFICATION SUBCOMMITTEE OF THE
POLITICAL SUBDIVISIONS INTERIM COMMITTEE**

August 2, 1999 - 1:00 p.m. - Room 414 State Capitol

Members Present:

Sen. R. Mont Evans, Chair
Rep. David L. Gladwell, Chair
Rep. Joseph G. Murray

Members Absent:

Sen. Michael G. Waddoups
Rep. Marda Dillree

Staff Present:

Mr. Joseph Wade
Research Analyst
Ms. Robert H. Rees
Associate General Counsel
Ms. Beverlee LeCheminant,
Committee Secretary

Note: Names of others present and copies of information distributed at the meeting are on file in the Office of Legislative Research and General Counsel.

1. **Call to Order** - Chair Gladwell called the meeting to order at 1:35 p.m.

2. **Subcommittee Goals** - Mr. Robert H. Rees, Associate General Counsel, distributed and discussed two handouts titled "Special Districts - Overview and Statutory History" and "Special Districts - Approaches to Recodification." He indicated that the result of the 1990 recodification was the gathering together of all special district provisions under one title. In 1997 and 1998, there was another recodification effort to make substantive changes to the current statutory provisions and to delete outdated provisions.

Mr. Rees distributed three charts containing the types of special districts and the provisions currently in code that apply to the types of districts. Mr. Rees told the committee that Chart #1 summarizes the provisions in statute currently dealing with the appointment or election of members of the governing bodies of the special districts. He indicated that some districts provide for appointed members and some for elected members and, in some of the districts, it is not clear whether the members are appointed or elected or who decides to appoint or elect them.

Mr. Rees stated that Chart #2 shows the name of the governing body over the special district, the number of members, length of terms, whether the members have staggered terms or not, the date the member's term begins, and the oath that is required.

Mr. Rees said that Chart #3 shows the compensation, reimbursement of expenses, whether a bond is required, organization of the board, and powers of the governing body of the special districts.

3. **Current Governing Body Provisions** - Mr. David Ovard, Chairman, Association of Special Districts, said that with regard to the election of members of the governing body with respect to water districts, when the Metropolitan Water District and the Water Conservancy District Acts were passed, there was a concern about politics and a conscious effort was made at that time to try to insulate water development from the local politics. Because water is growth, when special districts are politicized with elected boards, at least in the larger districts, there is the possibility of creating

new political problems. Mr. Ovard indicated that there are two general guidelines with respect to special districts, especially with the larger districts: 1) to allow enough members of the board to provide for representation of multi-counties and multi-cities; and 2) to create uniformity for the districts because of their differences.

Mr. Fred Finlinson, representing several of the special districts, responded to the selection process issue by saying that the selection process that is used allows the county commission to nominate and identify three people and then the governor selects one of those three people. He suggested three components for the Legislature to consider regarding the selection process: 1) to retain the district's ability to have flexibility in dealing with the problems it has to face; 2) when a change is made in switching from an appointed board to an elected board, there is the concept of one man - one vote; and 3) in some instances the governor could submit less than three names because enough people cannot be found that want to do the job.

Rep Gladwell asked if it would be helpful to have some language in the legislation that suggests that if a person is serving on a board, for example the mosquito abatement board, that person cannot be the person who also sprays for mosquitos. Would that disqualify a lot of otherwise qualified people and discourage public involvement?

Mr. Finlinson said that the conflict in the Water Conservancy Code needs to be resolved at a minimum. The difficulty with the language in the oath is that it creates more problems than it resolves because it is fairly easy to determine what a direct interest in a contract is, but it is hard to determine what an indirect interest is because the question becomes "how indirect does indirect have to be before it is no longer indirect." He indicated that possibly the best way to clarify what is indirect interest is through an amendment to the State Employees Ethics Act that states the kind of standard the Legislature wants all districts to comply with.

Mr. Rees said that on the one hand, districts are treated as independent government entities, totally separate from the entities that may have created them, but, in some respects, some of these districts have ties to the creating entity.

Mr. Mark Anderson, Legal Counsel, Utah Association of Special Districts, said that it may not be apparent now, but when the various types of districts were statutorily authorized, there was a reason for establishing them the way they were. Policy decisions were made and the committee is now questioning some of those policy decisions. The Legislature needs to look at each of the requirements and provisions and try to identify if, in fact, there are reasons for some differences. Mr. Anderson stated that one approach that could be taken is to make a one size fits all for independent special districts and then allow the Legislature to address and redress problems as they arise.

Mr. Anderson said cemetery maintenance districts have appointed board members because most of the districts are small, tend to be in rural areas, have no candidates to elect, and do not have any

money in the budget to hold elections. He told the committee he believes that the elected districts perform some of the best services in the state, but because special districts are so narrowly focused, the committee needs to decide if it is the best policy to continue to appoint the members for expertise or to elect them for representation.

Ms. Christine Finlinson, Central Utah Water Conservancy District, told the committee that it has a law that, while it may be cumbersome and complicated, works. She said that a number of special districts around the state are accomplishing tasks that no other government can efficiently handle and to be able to do that there is a level of expertise that has developed among the boards and those who administer those districts that is of such a level that it would be difficult to get those in an elected procedure. On the special districts, it is important that they have a level of expertise that is achieved through the appointment process that is in place. She indicated that she is not saying that something could not be better or that other language would suit the statute better, but that the statute has been modified to accommodate many different requirements and needs. Ms. Finlinson stated that to draft a model piece of legislation would be difficult and would probably endanger some of the expertise and the ability to deal with specific problems that have evolved through the current statute.

Mr. Eckhardt Bauer, State Auditor's Office, spoke to the committee's question regarding the conflict of interest issue. He said that what happens frequently in the smaller districts is that the board members are also members of the community who have the means to do things which they usually do, frequently for nothing. This causes a problem because they are on the governing board, frequently do not get paid, and cannot act as employees because the law says they can't. Mr. Bauer stated that there are drainage and cemetery districts where there is only one board member because it is difficult to appoint someone who will actually do the job and this law about those who serve on the board not also being able to be employees is something that should be looked at, especially for smaller districts.

4. Subcommittee Action

MOTION: Sen. Evans moved that the committee direct staff to draft legislation that standardizes the name of the government body to the board of trustees and that the length of term be standardized to four years; with language standardizing the staggering of terms with the beginning of the term starting at noon on the first of January, with a standardized oath required, with standardized language allowing for reimbursement of expenses, with standardized language concerning the organization of the board as outlined in selecting their own chair person and appointing the necessary officers, with standardized language on the bond requirement recognizing that there needs to be some flexibility from board to board, with standardized language allowing for some flexibility towards bonding in working with the Association of Special Districts, and with standardized language as to forms, records for the public, and any other details the committee may be overlooking. The motion passed unanimously.

MOTION: Sen. Evans moved that the committee direct staff to prepare legislation, after consulting with the Association of Special Districts, that addresses issues of compensation and to take into consideration compensation for large boards as well as small boards. The motion passed unanimously.

MOTION: Sen. Evans moved that the committee direct staff to prepare legislation in conjunction with input from the Association of Special Districts that addresses the powers of the governing body in two parts: 1) where powers can be standardized; and 2) that carves out the necessary exceptions. The motion passed unanimously.

Rep. Gladwell turned the chair over to Sen. Evans.

MOTION: Rep. Gladwell moved that the Board of Trustees, with the exception of water conservancy and public transit districts, consist of not less than three nor more than nine members, that there be an odd number of board members appointed, and that it follow a corporate model where the governing body initiating the district appoints the initial number and has the flexibility to adjust the number of members if needed. The motion passed unanimously.

Rep. Gladwell suggested creating a working group to meet and discuss these issues before the next subcommittee meeting.

MOTION: Rep. Evans moved that staff contact the Utah League of Cities and Towns, the Utah Association of Counties, and the Utah Association of Special Districts and develop recommendations concerning the appointment or election of members of the governing body. He included the Special Services District as well in terms of election as opposed to appointment. The motion passed unanimously.

5. Next Meeting Date - Rep. Gladwell scheduled the next subcommittee meeting for Monday, September 27, at 1:00 p.m.

6. Adjourn -

MOTION: Sen. Evans moved to adjourn the meeting. The motion passed unanimously.

Chair Gladwell adjourned the meeting at 4:10 p.m.