

**MINUTES OF THE
SPECIAL DISTRICTS SUBCOMMITTEE OF THE
POLITICAL SUBDIVISIONS INTERIM COMMITTEE**
Monday, October 23, 2000 - 9:00 a.m. - Room 414 State Capitol

Members Present:

Sen. R. Mont Evans, Co-chair
Rep. Joseph G. Murray, Co-chair
Rep. Eli H. Anderson
Rep. Loretta Baca
Rep. Marda Dillree
Rep. David L. Gladwell

Staff Present:

Mr. Joseph Wade,
Research Analyst
Mr. Robert H. Rees,
Associate General Counsel
Ms. Joy L. Miller,
Legislative Secretary

Members Excused:

Sen. Scott N. Howell

Note: A list of others present and a copy of materials distributed in the meeting are on file in the Office of Legislative Research and General Counsel.

1. **Call to Order** - Rep. Murray called the meeting to order at 9:05 a.m.

2. **Lieutenant Governor Certification of Local District Creation** - Mr. Robert H. Rees briefly explained the background on the Lt. Governor's involvement in the certification of the creation of local districts. The special district statutes were written to mirror the statutes regarding incorporation of a new city.

Mr. Jan Furner, Utah Association of Special Districts, indicated the association has discussed this issue with the Lt. Governor's office and brought this issue before the subcommittee for its consideration. The association has also talked with representatives from the State Auditor's Office.

Ms. Kim Bouck, Lt. Governor's Office, expressed concern that the responsibility for the certification of these districts falls completely on her. The statutes regarding incorporation and the certification process are very complicated. The Lt. Governor's office is concerned with their legal liability in the process. The process of incorporating a local district involves many different areas they have no control over. The office has no way to verify if the process was done correctly. She requested that if the responsibility for certification is to remain in the Lt. Governor's office, the legislature consider approving an additional staff person to handle the workload.

Mr. Eckhard Bauer, State Auditor's Office, explained that the creating entity is supposed to let the auditor's office know that a district is being created. In most cases that does not happen. He said his office is responsible for teaching the districts about the budgeting,

accounting, and financial reporting processes. Certifying the incorporation of new local districts is foreign to them. They have no expertise in that area and are uncertain of the possible liability.

Mr. Rees reviewed Section 17B-2-215 that was mailed to the members. The county or municipal legislative body has the responsibility for filing with the Lt. Governor the canvass of the election and a certification that all the requirements have been met. The Lt. Governor's responsibility is to verify that those two items are in their possession. The Lt. Governor then issues the certificate of incorporation. With the concerns expressed regarding liability, the code could be amended to make it clear that the Lt. Governor's only responsibility is to ensure that adequate documentation has been received and the Lt. Governor has no liability for the accuracy of the information provided to them.

MOTION: Rep. Gladwell moved to draft legislation that would take the certification process out of the Lt. Governor's office. The responsible body overseeing the creation of the district would certify to the State Auditor's Office when the process has been completed. The State Auditor would issue a certificate acknowledging receipt of the certification. There would be some type of limitation of liability for the State Auditor's Office in the process. The State Auditor's Office would notify the Lt. Governor's Office of the district's creation. The Lt. Governor's Office would have an obligation to enter that information into their files. The motion passed with Sen. Evans voting in opposition.

MOTION: Rep. Dillree moved to approve the minutes of September 5, 2000. The motion passed unanimously.

3. Eminent Domain Followup - Rep. Dillree requested that Mr. Rees draft individual legislation on this issue. She also requested the legislation be included in the mailing for the Political Subdivisions and Transportation Interim Committees.

4. Size Requirement when Creating a Local District - Mr. Furner explained that based on the current statute it is possible for one entity, either a developer or property owner, to create a special district. It is the feeling of the association that it could be considered an abuse of government. He said it was the consensus of their board to allow the new creation provisions to proceed to see if they will weed out some of the abuses. He was not sure if a size requirement could be established that would be uniformly applicable.

Mr. Paul Ashton, attorney, pointed out that to create a new district, the service is first offered to the city or county. All a city or county has to do to stop this type of situation is to provide the service.

Mr. Furner stated one idea that has been considered is giving cities and counties some

checkoff as they approve a subdivision plat and determine if there is adequate financing available.

Rep. Dillree commented that when an adequate bond has not been required and the developer has financial problems. It is also a problem when no requirement was originally made for notification of liens on the property.

5. Review of Draft Legislation - Mr. Rees distributed draft legislation, "Special District Amendments" (10-23-00 DRAFT 2001FL-0237/002). The legislation contains provisions concerning part of the annexation and withdrawal processes that were outlined by the Utah Association of Special Districts. Other provisions still need to be included. He indicated current statutory provisions still need to be incorporated and amended to coordinate with the new language. Mr. Rees also distributed an outline of annexation issues. He explained that the bill outlines the process for annexing areas outside the boundaries of a local district. The area proposed to be annexed may consist of multiple noncontiguous areas and need not be adjacent to the boundaries of the proposed annexing local district. Mr. Rees raised the questions of whether or not the county or city should be offered the opportunity of providing the service prior to including the area in a special district and when annexing across county lines, should percentage requirements be met overall and within each jurisdiction. Mr. Rees reviewed the petition, certification, public hearing, and notice requirements with the subcommittee.

MOTION: Rep. Gladwell moved to provide that the county or city have first right of refusal on the annexation proposal. The motion passed unanimously. Sen. Evans and Rep. Baca were absent during the vote.

MOTION: Rep. Gladwell moved to require minimum percentages when creation of a district involves crossing county lines. The motion passed unanimously. Sen. Evans and Rep. Baca were absent for the vote.

Mr. Rees discussed the protest and election provisions. If a majority of registered voters residing within the area proposed to be annexed and voting on the proposal vote in favor of annexation, the board may complete the annexation by adopting a resolution annexing the area. If the vote is against annexation, the process is terminated and the area proposed to be annexed may not be the subject of an annexation effort for three years.

MOTION: Rep. Gladwell moved to approve a waiting period of two years if the petition was initiated by the governing body. If property owners need service and it was not approved, they should not be required to have a waiting period. The motion passed unanimously. Sen. Evans and Rep. Baca were absent during the vote.

Mr. Mark Anderson, Utah Association of Special Districts, stated there was a view on the

part of legislators that there was a problem with the proliferation of special districts. One of the goals of legislation was to slow down the process. He did not see the same motivation behind the annexation process. The goal is the efficient delivery of service.

Ms. Kathryn Pett, UTA, pointed out that UTA is funded with sales tax rather than property tax. She expressed concern that the legislation provides that a person can only protest a proposed annexation if they are a private property owner. In the case of UTA it is not necessarily private property owners that will be paying for the service.

Mr. Rees discussed the exceptions under which the hearing, notice, and protest provisions do not apply for certain petitions. He reviewed the provisions for annexation through municipal expansion or expansion of retail district. If a new area is also being provided service by another district, annexation could still occur if the other district agrees. He explained that if two districts abut each other and provide the same service, they can adjust the boundaries. If 25 percent of either the voters or property owners within that area protest, the boundary adjustment can't happen. Mr. Rees raised the following issues regarding annexation: 1) should an owner of public property have the right to protest; 2) should there be a time limit on the adoption of the resolution; 3) there are no explicit standards for guiding and governing the board in determining whether to annex; and 4) does the board have ultimate discretion over whether to annex.

Mr. Anderson stated not all types of special districts have laws that allow boundary adjustments. He noted that 25 percent is too low of a percentage to allow it to stop the process. He suggested leaving the adjustment with the boards of trustees of the two districts.

Mr. Rees referred to the withdrawal provisions of the proposed legislation. He reviewed the processes by which a petition to withdraw may be initiated. Each petition must meet the requirements outlined in the bill. The board of trustees that certifies a petition will hold a public hearing on the proposed withdrawal. Notice of the hearing must be published in a newspaper of general circulation and posted in at least four conspicuous places. After the hearing, the board of trustees may adopt a resolution withdrawing the area from the local district after determining that certain conditions have been met.

Rep. Dillree referred to the issue of the election process. Rather than holding special elections, the legislature has preferred to hold them during a general election.

Mr. Grimley pointed out that he has 12 developers that want to annex into their district. If they had to wait until a general election, there would be no growth because the cities require secondary water prior to even looking at a preliminary plat for a new subdivision.

Mr. Anderson suggested that since the board is conducting the hearings and annexation

procedures, the board should conduct the election. There should be safeguards to determine the election is handled properly. A special election would be appropriate.

Rep. Dillree returned to the issue of eminent domain. She noted that giving UTA the authorization to use eminent domain may not require them to work as closely with local governments on the rights of way as they have in the past. She asked if there would be some way to require the involvement of local government as a route is determined.

Ms. Pett explained that federal law does govern the process by which a corridor is selected and requires significant public input and community involvement. She did not think it is an issue because of the federal requirement for a corridor analysis.

6. Discussion of future meeting dates - The next meeting of the subcommittee was scheduled for Thursday, November 9 at 9:00 a.m.

MOTION: Rep. Dillree moved to adjourn. The motion passed unanimously. Chair Murray adjourned the meeting at 11:40 a.m.

