

**MINUTES OF THE
SPECIAL DISTRICTS SUBCOMMITTEE OF THE
POLITICAL SUBDIVISIONS INTERIM COMMITTEE**
Tuesday, September 18, 2001 - 1:00 p.m. - Room 414 State Capitol

Members Present:

Sen. David L. Gladwell, Chair
Rep. David N. Cox
Rep. Scott Daniels
Rep. David L. Hogue
Rep. Joseph G. Murray

Staff Present:

Mr. Joseph Wade, Research Analyst
Mr. Keith M. Woodwell, Associate General Counsel
Mr. Joy L. Miller, Legislative Secretary

Note: A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or contact the Office of Legislative Research and General Counsel.

1. Welcome and Committee Business

Chair Gladwell called the meeting to order at 1:20 p.m.

MOTION: Rep. Murray moved to approve the minutes of the August 22, 2001 meeting. The motion passed unanimously with Rep. Hogue absent for the vote.

2. Discussion of How Withdrawal Affects Bond Ratings

Mr. Richard Scott, Chapman and Cutler, said if a criteria or standard can be set and the facts and circumstances can be reviewed without getting into unduly complicated legislation, everyone's interests are better served. Language could be drafted which indicates that if the bonds are rated, the change would not result in a reduction or a withdrawal on the rating. He said there may be situations where all bonds are not rated. He noted that rating agencies do not guarantee that a bond will receive the same rating in subsequent years.

Mr. Blaine Carlton, attorney, pointed out that bond counsel is always concerned that bonds issued are adequately secured. All special districts have different provisions when it comes to the issuance of debt. He explained there are two types of bonds issued by special districts: 1) general obligation bonds which are secured by the taxing power of the governmental entity; and 2) revenue bonds which are secured by the revenues generated from the revenue producing facilities which have been financed with the bond proceeds. He surmised that most special district bonds issued are probably unrated. He indicated that rating agencies typically rate larger bond issues. Sometimes bonds are not ratable and are marketed on a nonrated basis. He suggested that every special district act be carefully reviewed if the effort is to draft legislation to standardize the entire procedure.

3. Discussion of Optional Approaches to Withdrawal

Mr. Woodwell distributed a handout, "Withdrawal Procedures." The handout includes three models for a potential uniform withdrawal procedure. 1) The administration process is the proposed special district withdrawal procedures from S.B. 23, 2000 General Session. 2) The judicial process is the Municipal Disconnection Statute from Utah Code Annotated Section 10-2-501. 3) The combined administrative and election process is the special water district withdrawal statute from Utah Code Annotated Section 17A-2-340. Stages of the withdrawal procedure include initiation, petition review and approval, feasibility study

and public hearing, standards for approval, distribution of assets and liabilities, and miscellaneous provisions. He gave a detailed description and compared the three models at each stage in the process.

Mr. Scott said statutes have been developed over a period of time to deal with these districts. He pointed out that the combined administrative and election process does not cover all of the water districts in the state. There are three kinds of districts that provide water that are not consistent with this approach. These are water conservancy districts, metropolitan water districts, and special service districts. A totally different approach must be used when dealing with a wholesale entity than that used with a retail entity. Most of these entities already have withdrawal language in them that has worked in the past and should not be changed. A uniform bill may not be the appropriate way to handle the situation.

Mr. Jan Furner, Utah Association of Special Districts, commented that S.B. 23 was drafted for independent districts which would include water conservancy and metropolitan districts. It excluded special service districts and contained a special provision for wholesale.

Mr. Paul Ashton, White City Water Improvement District, stated S.B. 23 was a compromise bill. There is more flexibility in movement between wholesale and retail in S.B. 23.

Mr. Fred Finlinson, water conservancy district representative, explained that overall the generic approach does allow the district and its consultants to make sure the integrity of the bonds is kept in tact. The thrust was to allow the board of each district to make sure the bonds were protected. Some sort of recognition must be given for changes to occur.

Mr. Carlton indicated when bondholders buy a bond, they are relying upon the district to have the power to collect the revenues or levy the tax in order to make the debt service payment on the bonds. Language should be developed which assures bondholders that they are not in jeopardy of losing their security on the bonds. Although Section 17B-2-340 was an effort to outline the procedure that should be followed to ensure bondholders were protected, there are some aspects of the section that are problematic. There is no mechanism to determine what the proportionate share is.

Mr. Pat Casady, Sandy City, said if cities can handle bonding issues, there must be some type of process that could be applied to special districts. He spoke on behalf of the Utah League of Cities and Towns that the language should be left as it is currently and language added that withdrawals could be handled on a contractual basis. He said they would prefer the election model as it applies to county improvement districts for water. They have some concerns with S.B. 23 as written because it gives the Board of Trustees almost total and unconditional control as to whether or not to allow withdrawal. Mr. Casady said they believe a statute could be crafted that would be consistent with the municipal withdrawal statute which would provide a consistency of process between the cities and special districts and a uniformity that could apply to all the independent special districts. He indicated it would also balance the general purpose government with the special districts needs and would involve the courts as a last resort.

Mr. Craig Peterson, CAP Consulting, pointed out that the financial issues and structures of the district or municipality create a challenge. He asked the subcommittee to recognize that there are some unique issues that require caution in addressing. There are entities that are substantial, heavily capitalized, and cover

broad geographic areas. He said it would be worth considering if there are logical exemptions in the withdrawal process that would be better addressed in the uniform statutory methodology. Mr. Peterson pointed out that 98-99 percent of all withdrawals or annexation issues are handled on a contractual level. When issues become contentious, the best way to resolve them is the court. He said there should be a mechanism in place that allows for adjudication.

Mr. Finlinson suggested that special district representatives meet with bond counsel to develop a proposal that deals with the bonding security issue. Any recommendations would be brought back to the subcommittee for discussion and consideration.

Mr. Mark Anderson, Utah Association of Special Districts, said the association has been an active participant with the legislature for a number of years in trying to establish uniform legislation because that was the policy decision made by the legislature. Prior to that time the association resisted the concept of uniform statutory procedures for special districts. Over time their acceptance of the policy has changed. They are committed to developing a statutory scheme that makes sense. Mr. Anderson stated anything that is developed should have the approval of bond counsel. The association officially went on record last year of supporting S.B. 23 and they still support that approach. They are prepared to work with the committee and others in an effort to develop a workable solution.

The subcommittee reviewed the three models that have been discussed. Rep. Daniels stated that although there should be some judicial review, he cautioned against moving towards a judicial forum for a solution to the problem. Rep. Murray pointed out that whatever solution is developed, it must be flexible to apply to the different districts.

Sen. Gladwell suggested that using S.B. 23 as a model, staff counsel meet with special districts and city representatives as well as bond counsel in developing a list of each policy issues that must be made and possible recommendations for the subcommittee to consider at the next meeting. He asked that legitimate areas for exemption also be noted.

A meeting of the group was scheduled for October 2 at 10:00 a.m. in Room 407.

MOTION: Rep. Daniels moved that the subcommittee further explore the administrative approach (the approach taken in S.B. 23, 2001 General Session) as the approach for a uniform special district withdrawal process. The motion passed unanimously.

MOTION: Rep. Hogue moved to adjourn the meeting. The motion passed unanimously. Chair Gladwell adjourned the meeting at 3:50 p.m.

