

**REVISED MINUTES OF THE  
UTAH CONSTITUTIONAL REVISION COMMISSION**  
Friday, January 11, 2002 – 9:00 a.m. – Room 405 State Capitol

**Members Present:**

Mr. Alan L. Sullivan, Chair  
Mr. Kevin J. Worthen, Vice Chair  
Mr. Michael E. Christensen  
Rep. Greg J. Curtis  
Justice Christine Durham  
Sen. David L. Gladwell  
Mr. Byron L. Harward  
Mr. Morris D. Linton  
Judge Jon M. Memmott  
Dr. Michael Petersen  
Mr. Robin Riggs  
Speaker Martin R. Stephens  
Ms. Kristine Strachan  
Sen. John L. Valentine

**Members Absent:**

Rep. Patrice M. Arent  
Sen. Mike Dmitrich

**Staff Present:**

Mr. Jerry D. Howe, Research Analyst  
Mr. Robert H. Rees, Associate General Counsel  
Ms. Cassandra Bauman, 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 Cassandra Bauman at 538-1032.

**1. Call to Order**

Chair Sullivan called the meeting to order at 9:07 a.m.

**2. Review of Constitutional Amendments Proposed for Consideration During the 2002  
General Session of the Utah Legislature**

**Resolution Amending Revenue and Taxation Provisions of Utah Constitution**

Chair Sullivan explained that Sen. Valentine has agreed to sponsor the clarification draft of Article XIII, "Resolution Amending Revenue and Taxation Provisions of the Utah Constitution." He explained that a number of special interest groups expressed concern about the omission of the phrase "so that every person and corporation shall pay a tax in proportion to his, her, or its tangible property. . . ." in Section 2 of the draft.

Mr. Rees distributed correspondence from Mr. John McCarrey, Legal Counsel, Tax Commission (Utah State Tax Commission) along with two options for amending the language in Section 2.

Mr. McCarrey, Assistant Attorney General, Attorney General's Office, stated that he does not know whether the Tax Commission shares his concern that the proposed language places emphasis on the persons on whom taxes are imposed, rather the tangible property which is the subject of the tax. He indicated a preference for option 1, which, he said, satisfies his concern.

Mr. Harward indicated that the language "person and corporation" may be redundant language. He questioned if the language has been an issue for the Tax Commission. Chair Sullivan indicated that limited liability companies and partnerships may be subject to tax liability if they own property and yet may not be reflected in the language "person or corporation."

Mr. Worthen questioned the wisdom of using the terms assessment, valuation, levy, and taxation. He explained, for example, that valuation and assessment describe the same process. Mr. Bruce Johnson, Tax Commission, commented that separate rates of assessment are common in many states, especially for utility and residential properties. He explained that property has an actual value, an assessed value, and then has a tax rate which is applied to the assessed value. He stated that the concept of assessment is ambiguous, indicating that income taxes are assessed without any valuation component.

Mr. Gary Thorup, attorney, Holme Roberts & Owen, concurred with Commissioner Johnson regarding assessment and valuation. He stated that he is comfortable with the language which is in the current draft of the legislation and that the new concepts have not been considered efficiently to conclude that the language should be changed. He suggested that a small committee be formed to discuss the options.

Mr. Greg Freed, President, Utah Mining Association, explained that Mr. Mark Buchi is a member of the Association and that his expertise is highly regarded by the Association. He indicated that the Association is comfortable with the current draft. He suggested that the Commission continue to work with Mr. Buchi on this issue as the Association and many other organizations look to him for leadership.

Sen. Valentine expressed his desire to obtain a final draft of the legislation at this meeting. He indicated that he would prefer to present the Commission's draft to the Legislature.

**MOTION:** Mr. Harward moved to approve the draft as distributed, indicating that Mr. Thorup's suggestion to meet in a small group to discuss any concerns be considered. After discussion the motion was withdrawn.

**MOTION:** Mr. Harward moved to approve the draft legislation with option 1 to be considered if Sen. Valentine and Chair Sullivan cannot find a compromise agreement by Monday, January 14, 2002 to address Mr. McCarrey's concerns. The motion passed unanimously with Rep. Curtis, Speaker Stephens, and Ms. Strachan absent for the vote.

#### **Resolution Authorizing the Calling of Special Sessions by the Legislature**

Mr. Rees distributed and explained S.J.R. 5., sponsored by Sen. Bill Hickman.

#### **Resolution Authorizing the Legislature to Call Itself into Special Session**

Rep. Bennion explained the differences between H.J.R. 13 and S.J.R. 5.

Judge Memmott questioned how often sessions would be called if the Legislature could call them by majority vote. He also noted the majority party in Utah holds an approximate two thirds of the seats. The practical effect of this proposal would be that the majority party could call the Legislature into special session. Perhaps it would be wise to require a higher number of votes, he said.

Rep. Bennion explained that a special session is considered "special" because it is outside of the annual general session. He explained that the Legislature is part-time and that the majority of the legislators in Utah have full-time employment and for that reason will not be called regularly or routinely. He also explained that historically, the majority party shifts so that one party would not control for prolonged periods of time.

Mr. Harward expressed that the State could benefit from the Legislature having this authority. There is heavy pressure placed on the Legislature to convene in a special session because there are always issues that arise which are concerning and immediate to someone. He indicated that one safeguard for the Legislature is to funnel that pressure through the Governor's Office. He stated that not providing a constitutional amendment would ensure that the Legislature is not pushed into becoming full-time. Alternatively, the Governor may decline to call a legitimate special session because of political pressure from those opposed to the legitimate issues. Many states balance this power between the Executive and Legislative so that each have some control of the process. If Utah were to adopt such a change, Mr. Harward suggested a brief constitutional provision consistent with the current language of a veto-override session. He indicated that limitations should be placed on the length and number of times the Legislature could exercise this authority.

Ms. Strachan indicated concern for the legislation being a "tug of war" between the executive branch and the legislative branch and not the political parties within the Legislature. She expressed favorable opinion for a time limit on special session to be established in the Constitution if the legislation is to go forward.

Dr. Peterson stated that a constitutional provision ought to provide (1) that a consensus of the Legislature needs to be established that the subject of the special session is of significant importance that waiting until the next General Session would be unwise, and that a majority Legislature is not a sufficient number and (2) the constitutional provision should not permit the Legislature to regularly and routinely call itself into sessions.

Rep. Curtis explained that some issues placed on the call of special sessions are issues that may be only important to the executive branch. He expressed concern that in this case the branches of government are not equal.

Sen. Valentine indicated that he has concerns for the process in Article VII, Section 8, Subsection 4 concerning the convening of a veto-override session. He questioned if there will be a similar methodology to convening a special session as to convening a veto-override. He indicated that some parallel language should be present in the provisions.

Mr. Gary Doxey, General Counsel, Governor's Office, urged the Commission to consider what is best for the people of this State. He indicated that the issues in the constitution which deal with balance of powers

ought to be very carefully considered before changed. He agreed that the branches are not equal by design. He indicated that special sessions should be an exception to a rule, not the rule itself. Special sessions, he said, are not called without considerable compromise and input from the Legislature. Practical limits also exist within the constitution for the Governor's call of a special session. Indeed, if the Legislature desires to amend the process for calling special sessions, it would be wise to provide sufficient public notice before consideration of issues as is done during general sessions.

Judge Memmott stated that, having served in all three branches of government, he supports the general concept of the Legislature to call itself into a special session yet the language should be carefully crafted.

Chair Sullivan stated that the Commission can take action on legislation in the following ways: (1) approve with/without amendments, (2) approve with reservations, (3) approve subject to further study, (4) disapprove, (5) disapprove with specific reasons, or (6) decline to approve. He asked the Commission for a decision on the issue.

Mr. Harward suggested that the Commission review the issue further before a position is taken. He indicated that the issue is a lot more difficult than what is being presented.

Speaker Stephens stated that a higher threshold is needed for the Legislature to call a special session. He also explained that when the Legislature enters the last days of its annual General Session, legislation is sometimes rushed and mistakes are occasionally made. The pressure associated with a relatively short 45 day session is extraordinary, he said. This pressure would be reduced and clearer heads would prevail more often if the Legislature were permitted to call itself into a special session to consider critical issues. He urged the Commission to take a position on this issue.

**MOTION:** Mr. Christensen moved that the Commission approve H.J.R. 13 with the amendment from a majority to a two-thirds vote to call a special session.

**SUBSTITUTE MOTION:** Mr. Riggs moved that the Commission approve H.J.R. 13 with the amendments to provide a two-thirds vote to call the special session along with a short provision explaining the method of calling the special session similar to what is in the veto override provision.

Mr. Harward indicated that he would favor the motion if it included a time limit for special sessions.

The motion passed with Mr. Harward, Mr. Linton, and Ms. Strachan, and Mr. Worthen voting in opposition.

### **Resolution Requiring Public Notice Prior to Special Sessions**

Mr. Rees explained the resolution requiring 72- hour public notice prior to special sessions.

Rep. Curtis suggested that a 72-hour notice should also apply to the Legislature if it is authorized to call special sessions.

Mr. Doxey agreed that if the Legislature is authorized to call itself into special session, public notice should be required. He stated that adequate public notice is a key point. He explained that, customarily, there has never been a public hearing for a special session because there is often not enough public notice and that doesn't mean the public could not or should not be involved. Mr. Doxey stated that the Governor's Office has no position on the 72-hour notice.

**MOTION:** Mr. Riggs moved that the Commission take no official position on the legislation, but recommend that the concept of advanced notice be coordinated with the resolutions sponsored by Rep. Bennion and Sen. Hickman, if adopted. The motion passed unanimously with Mr. Harward, Speaker Stephens, and Sen. Valentine absent for the vote.

### **Resolution Amending Revenue and Taxation Article**

Rep. Wayne Harper distributed the draft legislation and clarified that the Commission does not need to take a position on the resolution at this meeting because it is a work in progress and he will bring it back for Commission action at the next meeting.

He indicated that the legislation limits local governments from increasing taxes unless voted upon by the public or if the property constitutes new growth.

Mr. Harward stated that the legislation would allow a town which has grown, and the nature of the services which it provides changes, to provide for the county to collect more taxes, yet the taxpayers do not have to pay more taxes. Rep. Harper indicated that would be reviewed.

Sen. Valentine questioned the effect of a taxing entity in a constricting economy with a decreasing tax base, yet the individual taxpayers have a protection of less than a maximum 2% increase on property taxes. Rep. Harper indicated his intent is for the revenues to be increased by charging a higher rate. He stated that Mr. Harward's concern would address that issue as well.

Dr. Peterson indicated that a homeowner who lives in the same home over an extended period of time during which the property value has substantially increased would have a relatively low property tax yet when the home is sold, the new owner would taxes would be based on current value.

Speaker Stephens indicated that the language "same property" needs to be defined such that it would exclude renovations or additions to the property that would increase the value of the property.

Judge Memmott questioned if separate taxation on the same class of property is constitutional. Mr. Worthen indicated that the United States Supreme Court upheld the a similar issue in California.

### **Joint Resolution - Debt Limits for Political Subdivision**

Rep. Harper presented H.J.R. 14 and stated that the resolution defines county indebtedness as "the value of taxable property in the county" and removes the references to third class counties. He explained that attempts to create cities of fourth, fifth, and sixth classes have increased. He also indicated that this

amendment would eliminate constitutional questions if other class political subdivisions are created, as has been proposed over the last few years. He indicated that the draft also makes technical changes.

Chair Sullivan indicated that Mr. Kent Michie, Zion's Bank, and Mr. Dale Okerlund, Wells Fargo, expressed concern to him after the last meeting regarding the draft legislation for a constitutional amendment without reviewing any implementing statutes. Re. Harper indicated that the current draft addresses those concern such that implementing statutes are not needed.

Mr. Jan Furner, Executive Director, Association of Special Districts, expressed support for the current draft of the legislation.

**MOTION:** Mr. Riggs moved that the Commission approve the legislation. The motion passed unanimously.

#### **Creation of Redistricting Commission**

Rep. Karen Morgan presented H.J.R. 3 which creates a redistricting commission consisting of seven members to assist in reducing the conflict of interest created in the constitution by requiring the Legislature to redistrict Congressional, Legislative, and State School Board Districts. She indicated that models from several states were reviewed in drafting the proposal and that the Speaker of the House of Representatives, President of the Senate, the Minority Leaders in both the House and Senate, the two leading political party's chairs would all appoint one member to the Redistricting Commission. Those six members would then elect a representative before March 1 of the year following the decennial enumeration or the Chief Justice of the Supreme Court would appoint a seventh member, who would serve as chair.

Rep. Curtis stated that creating a redistricting commission would not take the politics out of the process, only change the persons involved in the process.

Rep. Morgan stated that the reason for the legislation is that the redistricting process is flawed. She explained that the 2001 redistricting process brought forth concerns for the way redistricting is performed. She stated that there is a conflict of interest with the Legislature drawing the boundaries for its districts and expressed belief that the process would be better one step removed from the Legislature.

Dr. Peterson indicated that there is a very wide spread conception in Utah that the redistricting process is flawed. He stated that there does need to be some changes, but that this legislation is not necessarily the solution. He suggested that the Commission study this issue during the 2002 Interim. He stated that this issue needs to be reviewed in great detail.

**MOTION:** Mr. Linton moved that the Commission study the redistricting process during the 2002 Interim. The motion passed unanimously with Mr. Harward, Speaker Stephens, and Sen. Valentine absent for the vote.

### **Joint Resolution Amending Highway User and Motor Fuel Funds**

Rep. Scott Daniels presented explained that the constitution currently allows for a transportation fund, which is used mostly for the construction of highways and byways. He indicated that H.J.R. 8 would not require the Legislature to provide the funds for transportation, but it would allow the option for funding all modes of transportation. He suggested that this concept will be studied by the Transportation Interim Committee during the 2002 Interim and expressed the desire for the Commission to endorse the concept.

Chair Sullivan indicated that the amendment would cause considerable friction between transit agencies, Utah Department of Transportation, Utah Highway Patrol, and Utah Transit Authority.

Rep. Curtis expressed concern for the revenue streams—sales tax and user fees. He indicated that the two sources of revenue are divided in such a way that one type of transportation could use revenues from both sources whereas the other type of transportation can only use one revenue source.

Rep. Daniels stated belief that a constitutional restraint should not be confined to one resource while statute allows further funds to be allotted to another resource. He stated that the Legislature should have the authority to use fees and taxes for whatever circumstances may call for.

Mr. Harward stated that the Legislature, by statute, could use sales tax fees for whatever it would like, including highway and transportation purposes, but that the justification for higher sales tax on gasoline would no longer exist. He indicated that a restraint must be provided in the constitution because the Legislature will always be pressured to tax exempt persons and corporations as well as provide further funds to those persons and corporations.

Speaker Stephens questioned the value of the Commission voting on the legislation if it has already been voted to have further study at by the Transportation Interim Committee. He suggested that Rep. Daniels report back to the Commission after the Transportation Interim Committee makes its recommendation.

### **Joint Resolution Amending Revenue and Taxation Article - Exemptions**

Chair Sullivan indicated that S.J.R. 6, sponsored by Sen. Michael Waddoups, would allow an exception to a property tax exemption for property of political subdivisions used in an undertaking that is in competition with the private sector.

Mr. Michael Mazerine, representing local governments, expressed concern for what might be considered competition. He indicated that governments should not give up protections without knowing what the consequences may be. He stated that implementing legislation would be required before any decisions can be reached on the constitutional amendment.

Mr. Fred Finlanson, representing local governments, stated that the general belief that government should not be competing with the private sector has been discussed a number of times over the past 30 years. He urged the Commission to reject the proposal.

Mr. Rees stated that Sen. Waddoups' legislation would allow the Legislature to debate the exception and not automatically place the exemption on the property tax.

Ms. Strachan suggested discussing this issue at the Commission's next meeting.

### **3. Other Business**

The next meeting of the Commission will be Friday, February 1, 2002 at 12:00 noon in room 405.

### **4. Adjourn**

The meeting was adjourned at 12:22 p.m.