

**MINUTES OF THE
POLITICAL SUBDIVISIONS INTERIM COMMITTEE**
Wednesday, May 22, 2002 - 2:00 p.m. - Room 223 State Capitol

Members Present:

Rep. David L. Hogue, House Chair
Sen. David L. Gladwell
Rep. Stephen D. Clark
Rep. David N. Cox
Rep. Scott Daniels
Rep. Fred J. Fife III
Rep. Kory M. Holdaway
Rep. Joseph G. Murray
Rep. Darin G. Peterson
Rep. Richard M. Siddoway
Rep. Max W. Young

Members Absent:

Sen. Carlene M. Walker, Senate Chair
Sen. Beverly Ann Evans
Sen. Paula F. Julander

Staff Present:

Mr. Joseph Wade, Research Analyst
Mr. Robert H. Rees, Associate General Counsel
Ms. 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 by contacting the committee secretary, Joy Miller, at 538-1032.

1. Welcome and Committee Business

Chair Hogue called the meeting to order at 2:20 p.m. Sen. Evans, Sen. Julander, and Sen. Walker were excused from the meeting. Due to lack of a Senate quorum, the minutes were not approved.

2. Special District Bonding Laws

Mr. Fred Finlinson, legal counsel for Utah Water Finance Agency, explained that when most special districts were created, they had taxing and bonding authority. Special districts became mechanisms for local governments to create governmental financing to perform a special service. He said that local governments have been given permission to issue bonds pursuant to the Utah Municipal Bond Act. He noted that the underlying authority for special districts is not always clear. Bond counsel has suggested that the issuance of all state and local government bonds be handled through the Utah Municipal Bond Act. Mr. Finlinson stated that the UASD (Utah Association of Special Districts) would be willing to create a working group of district counsel and other interested parties to develop a format for the Legislature regarding an updated version of bonding legislation and authorization for special districts.

3. Special District Code Recodification

Mr. Rees gave an electronic presentation of the statutory history of special districts. He stated the 1990 recodification brought all special districts together under one title of the code and grouped them into two major categories, dependent and independent districts. Independent districts were separate governmental entities while dependent districts were financing vehicles or subunits of the city or county that created them. He reviewed with the members what has been done to date. He noted the concept of the 1998 revision was to rewrite the provisions into Title 17B. Mr. Rees indicated that the process is not yet complete. There are other districts under independent districts as well as dependent districts that need to be dealt with.

Members of the committee discussed the possibility of requesting a Special Districts Subcommittee. Rep. Hogue indicated if the subcommittee is approved, they will notify all interested parties to participate in the process.

4. Claims Filing Related to Special Districts

Sen. Gladwell said concerns have been raised regarding the ability of those injured as a result of the conduct of special districts to file the appropriate claim required under the Governmental Immunity Act. Some people have not received accurate information and therefore, have not filed a claim in a timely manner which has resulted in their inability to file a lawsuit. He stated they are trying to find a simple solution to be able to notify the appropriate party in these types of cases.

Mr. Steve Sullivan, attorney, Utah Trial Lawyers Association, said there is a problem with special districts in particular. Section 63-30-11 outlines who is provided notice in the notice of claim provision. The individual has one year from the date of injury to appropriately file the notice of claim. The governmental entity has up to 90 days to accept or reject it. If they do nothing, the claim is considered to be denied. The individual has one year after that period to file a lawsuit. In the past the notice of claim requirement has been held by the courts to be jurisdictional. On some occasions, entities contacted have provided the wrong information to the attorneys. The attorneys file the notice of claim and later learn the information was incorrect and the courts have thrown out the claim. He said they are attempting to develop ways to serve the purpose of providing notice to the government and prevent the problem from occurring. He said they have developed two options. The first option is to appoint an individual as a clearinghouse to receive the claims. The second option is to modify the language so that providing notice is not jurisdictional. He asked for permission to develop draft legislation that would be workable for all parties involved.

Mr. Terel Grimley, UASD, stated the clearinghouse option would have to be thoroughly studied. He said they would work with interested parties to develop a resolution. It would be helpful to identify who a claim is filed with at a district office.

Ms. Pamela Gill, UASD, agreed that it would be good to narrow it down to serving someone at the district with the proper authority. She expressed her willingness to work with Sen. Gladwell on the issue.

5. Condemnation Powers of Special Service Districts

Rep. Ure questioned whether a special service district has the right to condemn personal property rights, including water. A precedent was set in the 1930s when some culinary water was condemned. He raised the question that if a source of a spring is on someone's property and already meets culinary purposes but is being used for agricultural purposes, which use would have priority. These are some necessary clarifications that he felt the statute is silent on. The issue needs to be studied to determine if the law should be changed.

Mr. Finlinson explained that most of the special districts, especially those that deal with water, have general condemnation power and if needed could probably have the authority to exercise eminent domain to purchase the water. He stated that generally the condemnation rights have been used for land. He

suggested the committee consider the broad focus and not just the special district right of condemnation and whether or not to allow local governments to use the general condemnation authority to acquire culinary water for their citizens.

6. Municipal Plan for Moderate Income Housing

Rep. Hogue indicated that at the request of Rep. Ray, discussion of the issue will be postponed.

7. Adjourn

MOTION: Rep. Holdaway moved to adjourn the meeting. The motion passed unanimously, with Rep. Daniels absent for the vote. Chair Hogue adjourned the meeting at 3:40 p.m.