

**MINUTES OF THE  
UTAH CONSTITUTIONAL REVISION COMMISSION**  
Wednesday, November 7, 2001 – 9:00 a.m. – Room 405 State Capitol

**Members Present:**

Mr. Alan L. Sullivan, Chair  
Mr. Kevin J. Worthen, Vice Chair  
Rep. Patrice M. Arent  
Mr. Michael E. Christensen  
Rep. Greg J. Curtis  
Sen. Mike Dmitrich  
Mr. Morris D. Linton  
Judge Jon M. Memmott  
Dr. Michael Petersen  
Speaker Martin R. Stephens  
Ms. Kristine Strachan  
Sen. John L. Valentine

**Members Absent:**

Justice Christine Durham  
Sen. David L. Gladwell  
Mr. Byron L. Harward  
Mr. Robin Riggs

**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 the Office of Legislative Research and General Counsel.

**1. Call to Order and Approval of Minutes**

Chair Alan Sullivan called the meeting to order at 9:12 a.m. He welcomed the new members of the Commission: Dr. Michael Petersen, Associate Director, Utah Education Network; Ms. Kristine Strachan, former professor, University of Utah, College of Law; and Judge Jon M. Memmott, Second District Court.

Chair Sullivan referenced UCA Section 63-54-3 and explained that the Commission will review the proposed constitutional amendments at its January meeting.

**MOTION:** Dr. Petersen moved to approve the minutes of September 28, 2001. The motion passed unanimously with Rep. Curtis and Mr. Linton absent for the vote.

**2. Revenue and Taxation - Article XIII**

Chair Sullivan explained the reasons behind the rewrite of Article XIII are to clarify, simplify, reorganize, and modernize the Article. He emphasized that the rewrite is non-substantive.

Mr. Robert H. Rees, Associate General Counsel, Office of Legislative Research and General Counsel, explained the 10-17-01 draft of Article XIII. He explained the changes that were provided in the draft as approved in the last Commission meeting.

Mr. Mark Buchi, attorney, Home Roberts & Owen, explained the constitutional amendment concerning the establishment of a tax court, which overturned the Sutherland v. Evans case. He stated that Chief Justice Zimmerman was involved in deciding on the amendment to include the language "notwithstanding the powers granted to the State Tax Commission in this constitution" in subsections 6(4) and 7(4) of the draft legislation. He stated that the courts could interpret the exclusion of the language to mean that the Sutherland v. Evans case was indeed correct.

Mr. Kevin Worthen stated that perhaps the language should be left out since the inclusion of the language could imply that other provisions in the constitution may not have the same effect. He indicated that he has no concern in including it, but that the idea of court interpretation works both ways.

Mr. Gary Thorup, attorney, Home Roberts & Owen, stated that the language of the proposed draft has the potential to create tension between the powers of the Judiciary and the Tax Commission (Utah State Tax Commission). Sen. John Valentine expressed some similar concerns.

Ms. Kristine Strachan stated that a growing belief is that legislative histories are not a valid method for determining judicial matters. She indicated that the inclusion of the language "notwithstanding" is growing more common for clarifying separation of powers.

**MOTION:** Sen. Valentine moved to include the language "Notwithstanding the powers granted the State Tax Commission in this constitution" in the beginning of subsections 6(4) and 7(4). The motion passed unanimously with Speaker Stephens absent for the vote.

Mr. Buchi stated that the establishment of taxation for property which an individual owns is only clarified in the current constitution in subsection 3(1). He indicated that a personal property affidavit is required to be filed every year to prove ownership. He explained that a building is taxed to the owner of that building and that, in some cases, when a building is being used for rental purposes, the occupants of that building are also being taxed. He stated that the provision in the constitution which clarifies only property which is owned, and not used, by an individual may be taxed is needed to ensure property is not subject to double taxation.

Mr. Bruce Johnson, Tax Commission, stated that some property (i.e. leased aircraft, railcars, etc.) is owned by individuals outside of Utah and that the tax may not be paid if the tax can only be attributed to the owner. He indicated that the tax may be attributed to individuals who own or use the property and therefore, individuals who are using the property and live in Utah are currently being taxed. He indicated that the ultimate tax responsibility rests on the owner. He explained that the tax is imposed on the property and that there is indifference about who is responsible to pay the tax.

Mr. Rees pointed out that subsections 2(1) and 3(1) and section 10 of the current constitution are all reflected in the current draft.

Chair Sullivan indicated that, with ongoing litigation, the concern of inadvertently changing the constitution needs to be considered with all suggestions. Judge Memmott suggested providing parallel language in the draft legislation to avoid improper interpretation.

**MOTION:** Judge Memmott moved to amend the draft subsection 2(1) to read ". . . all tangible property owned or used in the state. . . ." The motion passed unanimously with Rep. Curtis, Mr. Linton, Sen. Valentine, and Speaker Stephens absent for the vote.

Mr. Buchi stated that references to "value in money," "just valuation," "the value," "its value," and "just value" do not substantively change the constitution, but should nonetheless be consistent. He indicated that the draft introduces another term, "just value in money." He stated that the Kennecott case lists definitions similar to these which indicate these terms all refer to "fair market value."

Mr. John McCarrey, Legal Counsel, Tax Commission, stated that changing the term would tip the scale on pending litigation. He suggested keeping the language as "just value in money."

Judge Memmott expressed strong desire to provide a single term. He explained that a different term implies that a different meaning is intended. He indicated that research should be done to determine if the terms were indeed intended to have the same meaning. He stated that if different meanings are intended for each term, the language should be preserved.

Ms. Strachan stated that "just value in money" being used throughout the legislation would be a mistake, indicating that a debate over the definition of "money" could result. She indicated that a universally known term should be used. She suggested using "fair market value."

Mr. Roger Tew stated that concern had been raised about changing terms because it could result in unintentional substantive changes. He stated that the reason "just value in money" was used is because of the comments presented at a previous meeting.

Mr. Johnson agreed that a single term should be used consistently throughout the legislation.

**MOTION:** Ms. Strachan moved to consistently use "fair market value" throughout the legislation, when referring to the value of the property. The motion passed unanimously with Rep. Curtis, Mr. Linton, and Speaker Stephens absent for the vote.

Chair Sullivan indicated that future comment on the issue will be taken for individuals or agencies who can provide reasons for maintaining separate terms.

Mr. Thorup suggested changing the language in the draft subsection 2(1) from "[s]ubject to exemptions" to "[e]xcept as otherwise provided." He explained that there are several ways to make adjustments to a tax that is imposed. He indicated that exclusion, exception, exemption, deduction, credit, and offset are all means of adjusting taxes. He stated that by changing the phrase in the constitution, an inadvertent substantive change is made.

**MOTION:** Dr. Petersen moved to revert to the language in the constitution, such that section 2(1) in the proposed draft would read "All tangible property. . . in the State, not exempt under the laws of the United States, or under this Constitution, shall be taxed. . . ." The motion passed unanimously with Rep. Curtis, Mr. Linton, and Speaker Stephens absent for the vote.

Mr. Thorup indicated that in subsection 2(2) of the draft, the term "real and personal property" was substituted for "tangible property." He stated that the draft would include intangible property, but that the constitution does not currently provide for intangible property to be subject to taxation.

**MOTION:** Judge Memmott moved to change "real and personal property" to "tangible property" in subsection 2(2) of the draft. The motion passed unanimously with Rep. Arent, Mr. Linton, and Speaker Stephens absent for the vote.

Mr. Thorup suggested including language which clarifies that land used for agricultural purposes only shall not be assessed on the value that land may have for other purposes. He stated that the current constitution

provides that the land ". . . used for agricultural purposes be taxed based on its value for agricultural use without regard to the value it may have for any other purposes."

The Commission concurred that the language was unnecessary and that the draft language of subsection 2(3) is clear.

Mr. Thorup stated that "taxed" needs to be changed back to "assessed" in subsection 2(3) of the draft.

**MOTION:** Ms. Strachan moved "taxed" be replaced with "assessed" in subsection 2(3) of the draft. The motion passed unanimously with Sen. Dmitrich, Mr. Linton, and Speaker Stephens absent for the vote.

Mr. Thorup suggested that "levy" be changed to "tax" or "taxation" to modernize the language.

**MOTION:** Mr. Christensen moved that the term "levy" be changed to "taxation" in subsection 2(6). The motion passed unanimously with Sen. Dmitrich, Mr. Linton, and Speaker Stephens absent for the vote.

Mr. Thorup indicated that subsection 5(4) of the draft does not include school districts. He stated that in a previous meeting, the Commission voted to include school districts in section 3, because "political subdivisions," it was decided, does not include school districts. He indicated that this may be the case in this instance as well and suggested that the Commission include school districts in subsection 5(4).

Chair Sullivan indicated that the purposes for separating school district from political subdivisions in the previous section were different and that it was not necessary to distinguish school districts in this instance.

Mr. Thorup indicated that section 5(5) should include the language "all" regarding revenue from taxes on intangible property. He stated that the omission of the language could leave the provisions to interpretation of "some" revenue.

**MOTION:** Sen. Valentine moved for section 5(5) to read "All revenue from taxes. . . ." The motion passed unanimously with Rep. Curtis, Mr. Linton, and Speaker Stephens absent for the vote.

Mr. Thorup stated that subsection 5(6) was rewritten in a way that some authority may have been omitted. He stated that the Commission should review the section to ensure no authority has been lost.

Mr. Thorup indicated that subsection 6(3) of the draft combines statements that are separate in the constitution. He expressed concern that it may have substantively changed the intent of the provision.

Chair Sullivan explained that similar concepts were combined for the sake of clarity. He indicated that it does not seem to change the meaning.

Mr. Thorup stated that constitutional powers have been changed in subsection 7(1) with the omission of the Board of County Commissioners being granted the authority over the County Boards of Equalization.

Chair Sullivan indicated that the Board of County Commissioners is obsolete in some counties and therefore, the language was changed.

**MOTION:** Judge Memmott moved that the language in subsection 7(1) read ". . .there shall be a County Board of Equalization as provided by statute."

Mr. Rees explained that this is one instance where the Commission's policy of not making a substantive change in the rewrite of Article XIII has to be ignored because without substantive change, the county board of equalization provision is irrelevant for counties without a county commission form government. He suggested that if the commission wants to make as slight a substantive change as possible, it may make more sense to indicate that county boards of equalization should consist of elected county officials, rather than leave their composition entirely up to the Legislature.

**SUBSTITUTE MOTION:** Mr. Worthen moved that the language read ". . . there shall be a County Board of Equalization consisting of elected county officials as provided by statute." The motion passed unanimously with Rep. Curtis and Mr. Linton absent for the vote.

Chair Sullivan asked the Commission members how they wished to proceed with the Article XIII rewrite for the 2002 General Session.

Sen. Valentine stated that he was comfortable with the draft and would be willing to sponsor the legislation.

Ms. Strachan explained that the Commission has focused on not making any substantive changes, and yet, there is guarantee that the Commission proposal will not be amended during the legislative process.

Judge Memmott suggested requesting letters of support from the agencies which have participated in the process for some concrete evidence to show the Legislature that the resolution is nothing more than a clarification of Article XIII.

Speaker Stephens explained that the Legislature is always hesitant to make a change to the constitution and indicated that the Commission will have to sell the idea to the Legislature, explaining why the Commission has rewritten the article. He stated that amendments to the legislation should be discouraged, but that amendments may be necessary if other unintentional substantive changes are found in the process.

Rep. Arent stated that the Commission has analyzed the language of the legislation in great detail and that the legislation is ready to be considered.

Judge Memmott stated that the clarification of the article will help people understand the tax process and they may become more involved. He stated that the clarification will tremendously benefit the public.

**MOTION:** Rep. Arent moved to approve the draft as amended in the meeting. The motion passed with Speaker Stephens abstaining from the vote, and Mr. Linton absent for the vote.

### **3. State and Local Government Sale/Leaseback Exemption - Article XIII, Section 2**

Chair Sullivan stated that he would not be voting on this issue because he represents UTA (Utah Transit Authority) on a number of issues, including the sale/leaseback exemption.

Chair told the Commission that Rep. Kevin Garn has stated that he will sponsor the legislation regarding the sale/leaseback exemption during the 2002 General Session.

Ms. Katherine Pett, General Counsel, UTA, distributed a corrected version of the "Proposed Property Tax Exemption for State or Local Government Property Transferred in Financing Transactions," and stated that the option of a sale/leaseback transaction would allow public entities to take advantage of innovative financing techniques. She explained that the transactions are structured to allow the owner (a public entity) of property who cannot benefit from a federal tax depreciation, to transfer the property to a private entity that can. She stated that in exchange for the tax depreciation, the private entity pays, in cash, 5 to 10 percent of the fair market value of the property to the public entity. She explained that Utah cannot currently benefit from this transaction because the Utah Constitution provides that the property would no longer be exempt from taxation once the property has exchanged ownership.

Ms. Pett summarized testimony received on this issue in past meetings by distributing correspondence from Mr. Paul L. Marx, Economist, U.S. Department of Transportation, FTA (Federal Transit Administration). She also stated that Mr. Marx and others at FTA provide continual oversight and control of the transactions that FTA supplies. She indicated that FTA has significant investment in the transactions and therefore oversee the assets for which the transaction is involved and oversees that control is maintained by the transit authority. She indicated that Mr. Marx explained that the IRS has audited these transactions and that only cross-border and international transactions have been shut down. She indicated that the reason for this was for the transaction to benefit domestic industries. She explained that the IRS found no wrong doing in the transactions because the federal government does not recognize the time value of money.

Ms. Pett stated that this tool is very important to UTA. She explained that the federal grant process requires UTA to qualify for projects based on the quality of the project and local support/contribution to the project. She also indicated that federal funding comes from congressional appropriations. She indicated that the transit authority is required to provide a 20 percent local match on projects when they request a full-funding grant from the FTA. She indicated that under the Bush Administration, the local match contribution has been raised to 40 percent. She explained that Utah is competing for federal transit dollars with other states that have used the sale/leaseback transaction and therefore have greater funding capabilities to provide the local match and sometimes overmatch.

Rep. Greg Curtis indicated concern with the State Corporate Franchise Tax. He explained that he spoke with UTA representatives and they agreed to present a resolution to the Transit Authority Board which would add funding back into the corporate franchise tax which may be lost during depreciation. He explained that a dollar's worth of depreciation would take about 5 cents out of the Uniform State School Fund. He stated that he supports the concept to bring more money into the hands of the transit authority for the various projects, but does not want to increase the funding at the risk of decreasing the funding for schools.

Commissioner Johnson explained that the Tax Commission has not taken a position on the proposed legislation.

**MOTION:** Sen. Dmitrich moved that the Commission approve the proposed sale/leaseback constitutional exemption, with appropriate amendments. The motion passed with Chair Sullivan abstaining from the vote. Speaker Stephens was absent for the vote.

#### **4. Break for Lunch**

The Commission recessed for a short lunch.

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

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

Rep. Wayne Harper presented draft legislation "Resolution Amending Revenue and Taxation Article," explaining that the amendment allows the Legislature to exempt up to 60 percent of fair market value of residential property. He indicated that the Legislature currently has the authority to exempt up to 45 percent of the fair market value under Article XIII, Subsection 2(8). Rep. Harper explained that property tax is the most likely to be increased and yet household incomes are primarily flat, especially for retirees. He distributed information regarding the property tax percentages in Utah from 1987 to 2000.

Rep. Curtis questioned if the provision should exclude a limit on the exemption of taxation on personal property and read "the legislature may provide by law for the exemption of taxation of residential property."

Sen. Valentine indicated that a substantial amount of the tax base is residential property tax and he questioned the impact on state revenue if the Legislature voted to reduce those taxes by fifteen percent by increasing the exemption from 45 to 60 percent.

Rep. Harper explained that there would be a shift in the economy if the Legislature decided to exempt 100 percent of the fair market value on residential property and indicated that is the reason for the limitation to 60 percent. He stated that research has not been conducted on the economic impact of exempting 60 percent of residential property.

Speaker Stephens clarified that the legislation would not automatically provide that the Legislature will exempt 60 percent of the fair market value of residential property, only that it would allow the Legislature to discuss the merits of the issue at a future time.

**MOTION:** Rep. Curtis moved to recommend the resolution, recognizing that it does not create conflicts in the constitution and that it is a policy decision for the Legislature to debate.

Ms. Strachan questioned if the Commission should just pass the bill forward. Judge Memmott agreed that the Commission should not take any position without further deliberation on the issue.

Mr. Roger Tew stated that the principle of exempting residential property is a departure from the concept of the revenue and taxation article, which is that all tangible property is taxed and taxed at a uniform and equal rate in proportion to its value.

Speaker Stephens agreed with Mr. Tew on that point, but stated that there would be no immediate impact if the proposal were to pass. He indicated that if the Legislature decided to increase the exemption to 60 percent at a future time, that is when the impact should be considered.

**SUBSTITUTE MOTION:** Sen. Dmitrich moved that the Commission take no position on the legislation. The motion passed with Rep. Arent, Rep. Curtis, and Speaker Stephens voting in opposition. Mr. Linton was absent for the vote and Mr. Christensen abstained.

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

Rep. Harper presented draft legislation "Joint Resolution - Debt Limits for Political Subdivisions." He explained that the legislation would create consistency with the debt limits for political subdivisions. He indicated that Article XIV creates the problem with debt limits by classifying cities, towns, and other political subdivisions by class. He indicated that the Commission had discussed this issue in a previous meeting and the Commission had requested that options be brought back.

Rep. Harper explained that one option is to provide that the allowable amount of indebtedness would not be dependent on the class of the county, city, or town. Another option would be to allow the Legislature to establish debt limits by statute.

**MOTION:** Mr. Christensen moved that the Commission defer action on this issue until it can be discussed further at the Commission's next meeting. The motion passed unanimously with Mr. Linton absent for the vote.

#### **Resolution Providing for Changing of County Line**

Sen. Millie Petersen presented draft legislation "Resolution Providing for Changing of County Line." She distributed a handout which indicates the line between Salt Lake and Utah Counties divides 42 residential properties into both counties. She indicated the difficulties that individuals would have with their property being divided into two counties, including: (1) school attendance, (2) property taxation, and (3) utility service. She explained that the resolution would allow the Legislature to move the county line to pass over a road instead of through personal properties. She also explained that the Article XI, Section 3, currently provides that "No territory shall be stricken from any county unless a majority of the voters living in such territory, as well as of the county to which it is to be annexed, shall vote therefor, and then only under such conditions as may be prescribed by general law."

Sen. Dmitrich expressed agreement with the concept of solving the issues of personal property divided into more than one county, but indicated that the Legislature may not be the appropriate body to handle the issue.

Speaker Stephens indicated that the constitutional provision establishes a high standard. He noted that the provision does not provide for a majority of the people who vote to pass the changing of county lines, but the majority of voters in each county. He suggested further review of the article.

Rep. Curtis stated that the language, as written, may not solve the problem.

**MOTION:** Speaker Stephens moved that the Commission postpone decision on the legislation. The motion passed unanimously with Mr. Linton absent for the vote.

#### **Constitutional Amending Highway User and Motor Fuel Funds**



This draft legislation was not discussed.

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

This draft legislation was not discussed.

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

Rep. Chad Bennion presented draft legislation "Resolution Authorizing the Legislature to Call Itself into Special Session" and explained that this legislation would allow the Legislature to call itself into special session with two-thirds vote from both houses. He indicated that the resolution would amend Article VI, Section 16 and enact Article VI, Section 34.

Sen. Valentine questioned if the authority of the Legislature to call itself into special session would conflict with the authority that the Governor currently has to convene the Legislature. He indicated that the matters of business for which the call is made by the Legislature could conflict if the Governor decided to add a matter of business which was not voted on by two-thirds of the Legislature. He noted that the Governor has the authority to add whatever business as may be brought to his attention while the Legislature is in session, under Article VII, Section 6, and that the Legislature calling itself into session would provide difficulties in which matters may be discussed during that session. He also questioned whether the Legislature could add items to the call by two-thirds vote that may not be the same matter of business as that the Governor made the call to convene the Legislature into special session.

**MOTION:** Sen. Dmitrich moved that the Commission defer action on this legislation and that the Commission study this issue further in the 2002 Interim.

Rep. Arent stated that the Legislative Process Committee discussed the issue of the Legislature calling itself into special session during the 2001 Interim. She indicated that the Commission should weigh in on the issue before the session, as this is an issue which may pass during the 2002 General Session.

**SUBSTITUTE MOTION:** Sen. Valentine moved to proceed to the next item on the agenda and discuss this issue at the next Commission meeting, prior to the 2002 General Session. The motion passed unanimously with Mr. Linton absent for the vote.

**Resolution on Investment of State School Fund and Uniform School Fund**

Mr. Richard Ellis, Deputy State Treasurer, explained that this issue has been before the Commission a number of times at prior meetings. He provided background on the issue, stating that the inflation protection factor and the constitutional requirement for the amount of inflation to be multiplied by the amount of interest added to the Fund (State School Fund). He explained that the State Money Management Act expanded the investments in which the fund could invest to include equity investments (including the stock market). He stated that the investment in equities, over time, has out performed inflation and fixed income investments.

Mr. Ellis indicated that the Fund has grown and that the protection factor, when applied, is greater than the amount of income (or interest) that is derived from the fund. He stated that the Enabling Act provides that the

interest from the fund be distributed to support public education. He stated that the provision in the constitution which requires the Fund to hold money equal to the inflation factor potentially conflicts with the Enabling Act which requires that the Fund be distributed. He stated that Mr. John McCallister, Attorney General's Office, studied the issue and found that the provision was invalid as applied.

Mr. Ellis stated that this constitutional amendment in lines 42-45 of the draft legislation, deletes the inflation protection language. He indicated that the proposal includes the term "and dividends" which he are currently considered an investment but when the originally drafted were not considered investments. He indicated that the current requirement of "at least half of state school fund principal shall be invested in equities" establishes a floor on how much equity investment should be held in the Fund. Mr. Ellis then explained that the language would be amended to delete the wording "Uniform School Fund" because the legislation is dealing solely with the State School Fund and the language "to protect the fund against losses, due to inflation" would be deleted.

Mr. Christensen stated that the 50 percent floor for investment of principal in equities is uncomfortable to include in the constitution. He indicated that the constitution is very difficult to amend and if that 50 percent was to be desired lower in the future, it would be a challenge to amend. He indicated that perhaps Mr. Ellis would want to include the percentage in statute instead.

**MOTION:** Rep. Arent moved to approve and recommend the proposed legislation, with the discussed amendments, to the Legislature. The motion passed with Ms. Strachan abstaining from the vote. Mr. Linton, Judge Memmott, and Speaker Stephens were absent for the vote.

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

Sen. Michael Waddoups presented draft legislation "Joint Resolution Amending Revenue and Taxation Article - Exemptions." He indicated that this resolution was brought to the Commission in February 2001. He stated that the constitutional amendment would give the Legislature the opportunity to debate whether to institute an ad valorem property tax on property of a political subdivision of the State that is "used in an undertaking that is in competition with the private sector. . . ." Sen. Waddoups stated that the monies produced with this resolution would assist in benefitting the schools. He indicated that he is not sure if those monies are of significant benefit, but that the fairness issue in competitive business is one of the purposes this legislation was drafted.

Mr. Roger Tew, Utah League of Cities and Towns, explained that competition with the private sector would minimally include public utilities, recreational activities, and the arts and performing arts. He stated that the concept is abstract and, therefore, difficult to support. He noted that anecdotes are plenty, but analysis is minimal.

Mr. Thorup, Intermountain Power Agency, expressed concern with the broadness and scope of the terms "competition" and "private sector." He stated that these individuals and businesses feel secure in the fact that they are tax exempt and that they do not want to be surprised with taxation when competition arises.

**MOTION:** Sen. Valentine moved to place this issue on the agenda for the Commission's next meeting and that staff research the concept of reinstating the language "outside of its geographic boundaries."

Sen. Waddoups suggested staff also research the fiscal impact of this issue.

The motion passed unanimously with Mr. Linton, Judge Memmott, and Speaker Stephens absent for the vote.

### **Constitutional Revision Commission Amendment**

This draft legislation was not discussed.

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

This draft legislation was not discussed.

### **Creation of Redistricting Commission**

Rep. Karen Morgan explained the draft legislation "Creation of Redistricting Commission," amending Article IX. She explained that the Redistricting Commission would consist of seven members. She stated that the qualifications would be that the members meet residency requirements, do not hold a position in the state during their membership, and the members do not seek election in any of the offices which the commission would draw boundaries for two election cycles following the redistricting. She indicated that the Redistricting Commission would uphold principles such as: preserving communities of common interest, considering natural and geographic boundaries, considering existing political boundaries, and ensuring each district is reasonably compact. She emphasized that the Redistricting Commission may not consider residences of any incumbents or political voting history of any area. She indicated that the members would be chosen by April 1 of the year following the census and would have 60 days to complete the plans following the availability of all information.

Rep. Morgan explained that there is an inherent conflict of interest with legislators drawing their own district boundaries. She indicated that the last redistricting phase presented numerous concerns with constituents as well as fellow legislators that were not necessary. She indicated that gerrymandering is a very real issue and that this legislation could assist in resolving that issue and others.

Mr. Worthen stated that redistricting is a very important and emotional issue. He indicated that it is an issue where individuals are open to litigation and stated that standards which are placed on the Redistricting Commission need to be carefully considered, referencing the Federal Voting Rights Act.

Sen. Valentine stated that a Redistricting Commission would not necessarily solve the issue. He indicated that litigation will happen no matter what the redistricting personnel decide. Sen. Valentine stated that he does not feel a redistricting commission would solve the issue.

Speaker Stephens provided information about the 2001 redistricting phases in numerous states. He indicated that many of the states have had or are currently in litigation. He indicated that the process is difficult, but that the process would not be improved by the creation of a redistricting commission.

Rep. Arent stated that public confidence in the system and the process is important. She expressed concern that litigation should not be an issue of whether or not the system is working. She spoke in favor of the concept.

### **Resolution Creating Redistricting Commission**

Rep. Ron Bigelow presented draft legislation "Resolution Creating Redistricting Commission" and indicated that under this proposal the Redistricting Commission would submit its proposal to the Legislature. He stated that the legislation combines the concept of an individual commission as well as legislative input, in the hope that the process would improve. Rep. Bigelow explained that the Legislature could always vote down the proposal. He indicated that the lack of specifics in the legislation is by design. He indicated that the specifics which are placed in statute are easier to change than amending the constitution, if ever necessary (in order to be keep pace with federal law). He stated that his intent is for a non-legislative body to propose the plan to the Legislature for final approval.

Rep. Bigelow noted that the Wall Street Journal published an article "The Gerrymandering Scandal" and used Utah as one of three examples. He indicated belief in a slow change with the process. He explained that allowing the Legislature to retain some authority in the process is a start to improving apportionment.

Chair Sullivan questioned the importance of the Legislature considering this issue in the 2002 General Session. He indicated that the issue should be studied further, explaining that the Commission works best when it deliberates issues extensively before recommending an amendment to the constitution.

Rep. Arent stated that the issue will be considered during the 2002 General Session and noted that since it is such an emotional issue, it will likely be acted upon. She indicated that a body that does not have a political interest should make a decision on the issue. She noted that the Commission should make a decision on the issue before it is voted on by the Legislature.

**MOTION:** Rep. Curtis moved to proceed to the next item on the agenda. The motion passed unanimously with Mr. Linton absent for the vote.

## **6. Other Business**

The next meeting of the Constitutional Revision Commission is tentatively scheduled for Friday, January 11, 2002 at 9:00 a.m. in room 405.

## **7. Adjourn**

Chair Sullivan adjourned the meeting at 4:44 p.m.