

# Key Issues for the 2003 General Session

*Prepared by the Office of Legislative Research and General Counsel  
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## **BUSINESS, LABOR, AND ECONOMIC DEVELOPMENT**

- ▶ **Alternate Base Period for Unemployment Insurance**—This allows workers that do not qualify for UI (unemployment insurance) using a typical base period to seek benefit qualification based on an ABP (alternate base period). The typical base period definition does not allow a worker filing for UI to use wages earned in the last completed calendar quarter. Section 35A-4-201 UCA states that a claimant can qualify for benefits based on wages earned in the "first four of the last five completed calendar quarters." The ABP would allow workers not qualifying under the traditional definition to seek qualification using the last four completed calendar quarters. This program is being funded by federal money disbursed to the states through the Reed Act Distribution. Due to the nature of this funding the program will only be implemented for 3 years.
- ▶ **Child Care Amendments**—Draft legislation was approved by the Workforce Services and Community and Economic Development Committee that standardizes the definition of "child care" within the Utah Code, modifies the duties of the Office of Child Care, modifies the Child Care Advisory Board, and clarifies the administration of the Expendable Trust Fund.
- ▶ **Consumer Lending**—The Business and Labor Committee has studied several issues in the area of consumer lending including regulation of check cashers ("payday lenders") and predatory mortgage lending. Draft legislation "Payday Lending" and "Regulation of Check Cashers" address terms of loans extended by check cashers and examinations conducted by the Department of Financial Institutions.
- ▶ **Contingent Tax Credit for Venture Capital Funds**—The Workforce Services and Community and Economic Development Committee studied the issues related to a contingent tax credit for venture capital funds which would be used to attract venture capitalists to Utah. The Committee will continue to work on draft legislation in December and January through an existing workgroup.
- ▶ **Funeral Industry Regulation**—The Business and Labor Committee has studied several issues in the area of funeral industry regulation including consumer protection for individuals purchasing funeral goods, services, and preneed contracts, and other potential changes to the laws governing funeral services. The Committee discussed draft legislation "Funeral Services Amendments" and recommended draft legislation "Prenneed Funeral Arrangement Amendments" at its November meeting.
- ▶ **Viatical Settlements**—Viatical settlements involve the purchase of life insurance contracts in exchange for a cash settlement (at a percentage of the policy) for immediate use. Currently, only those with a terminal illness may use viatical settlements. At its November meeting, the Business and Labor Committee approved draft legislation "Viatical Settlements," which allows individuals without a terminal illness and who meet certain conditions to use viatical or life settlements and outlines how those settlements would be regulated.

## EDUCATION

- ▶ **Charter School Funding**—Charter schools do not receive the same level of funding as other public schools in Utah. It is expected that legislation will be introduced to modify the funding formula for charter schools to bring their funding level closer to that of other public schools.
- ▶ **Tuition Tax Credits**—Legislation is being developed to provide a tax credit for tuition payments to private elementary or secondary schools or for donations to scholarship-granting organizations that award scholarships for students attending private elementary or secondary schools.
- ▶ **U-PASS**—The Enhancement of Public Education Task Force has recommended that U-PASS (Utah Performance Assessment System for Students) be modified to reduce the cost and amount of time involved with testing academic performance. Tests recommended for elimination include tests with constructed response items, which are test items that require a written answer and must be hand-scored. Diagnostic reading tests in grades 4-9 may also be eliminated, because reading performance can be adequately assessed with language arts tests that students in those grades are required to take.

## HEALTH AND HUMAN SERVICES

- ▶ **Child Welfare**—On November 21 the U.S. District Court directed the State to work with the National Center for Youth Law to determine whether an agreement could be reached that would facilitate the implementation of the Performance Milestone Plan, the successor agreement to the *David C. v. Leavitt* settlement agreement. Any agreement by the parties may require legislative approval.
- ▶ **Children's Health Insurance Program (CHIP)**—During the past year CHIP has established an enrollment cap, implemented limited enrollment periods, and reduced dental benefits to operate within available revenues. The Legislature may consider whether additional funding should be provided to restore full dental benefits (CHIP still funds emergency and preventive procedures but does not pay for restorative dental work) and increase the enrollment cap.
- ▶ **Consideration of Historical Information**—Proposed legislation requires the court to consider all relevant historical and material information when making involuntary commitment determinations. The proposed change was approved by the Involuntary Commitment of the Mentally Ill Task Force and the Health and Human Services Interim Committee.
- ▶ **Criteria for Involuntary Commitment**—Current statute requires that in order to be involuntarily committed, the court must determine that a person poses an "immediate danger" to himself or others. Proposed legislation changes this criteria to "substantial danger." The proposed change was approved by the Involuntary Commitment of the Mentally Ill Task Force and the Health and Human Services Interim Committee.
- ▶ **Definition of Mental Illness**—Proposed legislation tightens the definition of "mental illness" as it relates to involuntary commitment. The definition not only modifies what mental illness is but also what it is not, including a list of six exclusions. The proposed language was approved by the Involuntary Commitment of the Mentally Ill Task Force and the Health and Human Services Interim Committee.

- ▶ **FACT**—Funding for Families, Agencies, and Communities Together for Children and Youth at Risk was eliminated, effective FY 2003. The Office of the Legislative Fiscal Analyst has recommended continuing FACT, but not as a separate program. The Legislature may take follow-up action during the 2003 General Session.
- ▶ **Funding of County Programs**—As demand for locally provided health and human services increase, available funding may be inadequate for the local governments to meet all state mandates. The Funding of State and County Health and Human Services Task Force is examining the roles and relationships between state and local governments in an effort to alleviate this funding issue and other problems. The Task Force will ask for reauthorization to continue studying the issue for another year.
- ▶ **Information and Assistance Regarding Advanced Directives**—Proposed legislation requires the Division of Substance Abuse and Mental Health to make rules to direct that individuals receiving services through local mental health authorities or the Utah State Hospital be informed about and, if desired, provided assistance in completing an advance directive, which would help determine future care in the event patients become unable to express their treatment preferences. The proposed language was approved by the Involuntary Commitment of the Mentally Ill Task Force and the Health and Human Services Interim Committee.
- ▶ **Involvement of Families**—Proposed legislation requires the Division of Substance Abuse and Mental Health to make rules "to educate families concerning mental illness and promote family involvement, when appropriate, and with patient consent, in the treatment program of a family member." The proposed language was approved by the Involuntary Commitment of the Mentally Ill Task Force and the Health and Human Services Interim Committee.
- ▶ **Medicaid**—Although the Legislature increased Medicaid funding last year by over \$25 million, budget constraints resulted in the reduction or elimination of various optional Medicaid benefits. The Legislature may consider to what degree dental, podiatry, speech pathology and audiology, and other benefits should be restored. The Legislature is also facing the possibility of significant budget increases to maintain existing services.
- ▶ **Notice of Rights When Attorney Not Present**—Proposed legislation requires those who examine proposed patients not represented by an attorney to state that they have the right to remain silent and that patients be informed of the potential uses of the information they provide. The proposed language was approved by the Involuntary Commitment of the Mentally Ill Task Force and the Health and Human Services Interim Committee.
- ▶ **Number of Days Patients Held Prior to a Hearing**—Proposed legislation reduces the number of days a patient may be held pending an involuntary commitment hearing from 10 court days to 5. The proposed language was approved by the Involuntary Commitment of the Mentally Ill Task Force and the Health and Human Services Interim Committee.
- ▶ **Primary Care Network**—Earlier this year the U.S. Department of Health and Human Services approved Utah's groundbreaking Medicaid waiver which extends primary care health benefits to approximately 25,000 Utahns. Companion legislation enacted at the same time allows the private insurance market to offer similar coverage. The Legislature is monitoring the development of a mechanism to encourage participation by employers and the private insurance market. Ultimately, this may require additional legislation.

- ▶ **Spend Down Provision for Medicaid**—The Access to Health Care and Coverage Task Force recommended legislation to lower the spend-down level for low-income seniors and individuals with disabilities. Currently, these individuals must "spend down" their income before they can receive Medicaid benefits. Spend down requires low-income seniors and people with disabilities with income above the federal poverty level (FPL) to either pay the State or health care provider the necessary amount of income to lower their income level to at least one-half of the FPL before Medicaid benefits may be received. This legislation only requires a spend down to 100 percent of the FPL.

## **JUDICIARY, PUBLIC SAFETY, AND CRIMINAL JUSTICE**

- ▶ **Alternative Sanctions**—The Law Enforcement and Criminal Justice Committee discussed the value of providing effective alternative sanctions in the criminal justice system, such as drug courts, day reporting centers, and re-entry programs after prison. Alternative sanctions provide a cost-effective way to respond to the offender's specific needs and reduce recidivism while maintaining public safety and offender accountability.
- ▶ **Divorce and Parent-time**—The Judiciary Committee may endorse legislation that requires court ordered visitation to be enforceable so that custodial parents cannot wrongfully deny court ordered parent-time.
- ▶ **Drug Forfeiture**—The Law Enforcement and Criminal Justice Committee recommended draft legislation "Property Forfeiture Amendments" which makes changes to the drug forfeiture law that was amended by the passage of Initiative B in 2000. The bill would allow forfeiture to effectively resume in Utah, enable Utah to receive forfeiture proceeds from the federal government, and provide that a portion of forfeiture proceeds be used for substance abuse treatment.
- ▶ **Sentencing in Capital Cases**—In response to the recent U.S. Supreme Court case *Atkins v. Virginia*, which prohibits the execution of the mentally retarded, the Judiciary Committee is considering and may endorse legislation that changes the criminal definition of mental retardation and provides that defendants found by the court to be mentally retarded may not be subject to the death penalty.
- ▶ **Sentencing for DUI Offenders**—The Law Enforcement and Criminal Justice Committee recommended draft legislation "DUI Plea Restrictions" which requires prosecutors and judges to be informed about a defendant's prior DUI offenses before accepting a guilty plea or sentencing an offender regarding a current DUI offense.
- ▶ **Unauthorized Practice of Law**—The Judiciary Committee is considering whether to provide in statute a definition of the unauthorized practice of law.
- ▶ **Uniform Trust Act**—The Judiciary Committee may endorse legislation establishing a uniform trust act.

## **NATURAL RESOURCES, AGRICULTURE, AND ENVIRONMENT**

- ▶ **Public Notice To Water Users**—The Division of Water Rights has the statutory responsibility to provide public notice regarding changes to water rights. As the cost and responsibility of the required public notice has increased, the division has sought new ways to comply with statute and minimize costs. The Natural, Resources, Agriculture and Environment Committee may consider potential alternatives that would provide adequate notice and reduce costs.
- ▶ **Water Funding**—A portion of state sales and use tax is dedicated to fund water projects. The Gubernatorial and Legislative Task Force on Alternative Revenue Sources for Water Funding is reviewing ways to fund water development that do not require the diversion of sales and use tax revenue.

## **STATE AND LOCAL AFFAIRS**

- ▶ **Bonding, Budget, and Appropriations Issue**—The Government Operations Committee recommended legislation that amends statutes relating to bonding, the Budget Reserve Account, and the Governor's Office of Planning and Budget. Individual legislators may also propose changes in this general issue area.
- ▶ **Campaign Finance/Gifts/Ethics**—Although these issues have not been addressed directly by the Government Operations Committee during the 2002 Interim, they may be the subject of debate and legislation during the 2003 General Session.
- ▶ **Election Laws and Processes**—As in recent sessions, there may be legislation aimed at reforming or making other changes to Utah's Election Code. Specifically, the Legislature may choose to make changes to election laws in response to the recently passed federal election legislation, the "Help America Vote Act of 2002."
- ▶ **Local Planning for Source Protection of Watersheds**—Federal law requires the protection of watersheds. The Division of Drinking Water has enacted rules requiring water suppliers to take measures to protect their water sources. Water suppliers do not have control over land use and are unable to protect water sources. Municipalities and counties are given authority to regulate land use (state and federal lands are exempt). A proposal requiring the coordinated development of land use plans protecting watersheds has been discussed. Some are asking that the discussions continue in the 2003 Interim through a task force.
- ▶ **Rewrite of Title 17A Regarding Special Districts**—The Political Subdivisions Committee recreated the Special Districts Subcommittee to continue to rewrite Title 17A, "Special Districts." The Special Districts Subcommittee and the Political Subdivisions Interim Committee recommended draft legislation "Public Airport and Aeronautics Amendments," "Hazardous Waste Facilities Management Amendments," "Extension of Timing for Creating a Local District," "Public Transit Districts Annexation Amendments," and "Lieutenant Governor Certification of Special District and Local District Annexations, Withdrawals, and Dissolutions."
- ▶ **Statewide Initiatives**—The Utah Supreme Court recently issued an opinion that declares unconstitutional portions of Utah's initiative law. The Government Operations Committee recommended legislation proposing changes to statutes governing the initiative process. Individual legislators may also propose legislation amending the initiative process.

## **PUBLIC UTILITIES AND TECHNOLOGY**

- ▶ **Access To Government Records**—The Utah Information Technology Commission reviewed whether GRAMA (Government Records Access and Management Act) should be amended to address when a governmental entity is required to disclose records in a list or compiled form. A key issue is balancing the privacy rights of the individual with the public's right to information. The Commission moved that a focused study of certain GRAMA issues be included as part of its study request submitted to the Legislative Management Committee for the 2003 Interim study.
- ▶ **Amendments To Interlocal Cooperative Act**—The IPA (Intermountain Power Agency) and the UAMPS (Utah Associated Municipal Power Systems) brought issues to the Public Utilities and Technology Committee regarding the generation of output requirements and the payments of a fee in lieu of property taxes under the Interlocal Cooperative Act. The Committee approved legislation addressing these issues.
- ▶ **Digital State Network**—The Utah Information Technology Commission reviewed information regarding the creation of a single state digital network by combining numerous existing networks.
- ▶ **E-Rate**—The UEN (Utah Education Network) and representatives of school districts raised issues relating to how the State can more effectively participate in the federal E-Rate program, which provides monies for telecommunications and information technology to qualifying schools and libraries. One solution being examined is using the TechCore as a resource to school districts in conjunction with UEN.
- ▶ **eGovernment**—This topic is part of a multi-year project, begun in 1999, to systematically authorize state entities to utilize information technology in providing services. The long-term goal is to provide 24-hour access to government services 7 days a week. The Utah Information Technology Commission unanimously adopted legislation to clarify general statutes that facilitate eGovernment.
- ▶ **Energy Data Collection and Reporting**—The Public Utilities and Technology Interim Committee reviewed the process for collecting energy related data across all state entities that gather energy related data. One key issue is whether the state should provide a central location where energy data is available and how that centralized approach would improve public understanding of energy in Utah. The Committee unanimously approved draft legislation requiring the Office of Energy to gather energy data collected by state agencies and clarify reporting requirements of the Office of Energy.
- ▶ **Enterprise Management - State Information Technology Infrastructure**—The Governor and the State's CIO (Chief Information Officer) are proposing changes in the management of information technology. These proposed changes have the potential of affecting all three branches of government and the education community. The Utah Information Technology Commission is reviewing options, including legislation, for improving the management of state information technology resources.

- ▶ **Longitudinal Access to Interstate Highways**—The Competition in Telecommunications Industry Task Force recommended that the Public Utilities and Technology Interim Committee review whether statutory changes are needed to address any undue barriers to rights-of-way access along the State’s interstate highway system. Specifically, the recommendations include eliminating in-kind compensation as a condition for a telecommunications provider to have access to rights-of-way; and ensuring that the system is sensitive to the differences between rural and urban areas, which may include maintaining some type of zone structure.
- ▶ **Personal Information Privacy**—The Public Utilities and Technology Interim Committee reviewed issues concerning the disclosure of nonpublic personal information acquired by public and private entities in the normal course of business. Key questions have focused on how to preserve the public's right to privacy yet allow the public and private sectors to conduct business efficiently. The Committee approved draft legislation imposing notice requirements for certain circumstances when a commercial entity discloses its nonpublic personal information for compensation.

## RETIREMENT

- ▶ **Retirement Contribution Rates**—In addition to the salary paid to public employees, a percent of the salary is required to be placed in the retirement fund for each eligible employee. This contribution is required to keep retirement systems funded on an actuarially sound basis. The contribution rate has been 10.4 percent of salary in the Public Employees Noncontributory System for the past few years. For FY 2004, the Retirement Board has recommended a contribution rate increase to 11.7 percent. This increase may be difficult to fund in light of the current economic conditions.

## REVENUE AND TAXATION

- ▶ **Declining State Revenues**—For the fiscal year ending on June 30, 2002, Uniform School Fund revenues were 8 percent lower than the previous fiscal year and General Fund Revenues were down 1.2 percent. Individual Income Tax Collections were down almost 6 percent (the first decline since the current system was established in 1973) while corporate franchise and income tax revenues were almost 32 percent lower. For the first 4 months of FY 2003, combined General Fund and Uniform School Fund revenues are \$23 million below target. Continuing sluggish economic conditions, including weak or no employment growth, flat retail sales, slowing construction activity, and a sagging stock market means that legislators will likely face flat or declining state revenues next year.
- ▶ **Oil and Gas Severance Tax**—The state severance taxes on oil and natural gas include various incentives that are meant to encourage additional exploration and production. These incentives include credits, exemptions, and a differential rate structure. One of these incentives, the recompletion or workover credit, is scheduled to sunset on December 31, 2004. The TRC (Utah Tax Review Commission) was directed by the Legislature to undertake a comprehensive review of these incentives. The TRC recommends that all of these incentives should continue.
- ▶ **Streamlined Sales Tax Project**—For the past year, a group of states called the Implementing States Streamlined Sales Tax Project has been meeting to find ways to simplify the administration of the sales and use tax. The project is completing its work and will soon make recommendations for the states to adopt. The Legislature may consider these recommendations during the 2003 General Session.

- ▶ **Study of Certain Exemptions**—During the 2002 General Session, the Legislature enacted S.J.R. 6, *Joint Resolution Urging a Study of Certain Exemptions*. S.J.R. 6 directed the Utah Tax Review Commission to undertake a review of certain government and nonprofit entities that benefit from property, sales and use, and income tax exemptions to determine whether these exemptions should be continued, modified, or repealed and if these tax exempt entities should contribute to funding public education, higher education, or both. The TRC will make a progress report to the Revenue and Taxation Interim Committee at its November meeting and will make a final report 1 year from now.
- ▶ **Telecommunications Taxes**—The Competition in Telecommunications Industry Task Force is preparing legislation in cooperation with the telecommunications industry to expand sales and use taxes to include all interstate and international calls (exempting qualifying call centers) and to exempt purchases of telecommunications equipment and machinery. The legislation also modifies municipal authority and clarifies local rights-of-ways fees.

## TRANSPORTATION

- ▶ **Clean Special Fuel Tax Certificate**—The owner of a vehicle powered by propane, natural gas, electricity, or other clean fuel is required to purchase an annual clean special fuel tax certificate for that vehicle in lieu of paying the 24½ cents per gallon state special fuel tax. The Utah State Tax Commission has reported that they have not found a good method to enforce the purchase of the certificates. In addition the cost of the certificate is \$82 per year for a passenger vehicle compared to an average of \$162 paid in fuel taxes for all other registered vehicles. The \$82 includes a \$35 surcharge that is repealed after 2005. Excluding the surcharge, if the fee were originally linked with the fuel tax rate, the fee today would be \$126. How enforcement can be improved and whether the rate should also be adjusted are issues that may be addressed during the 2003 General Session.
- ▶ **Driver Education**—Driver education in the public schools continues to be subsidized by public education funds, despite a \$2.50 annual automobile driver education fee charged on all vehicles registered in the state. Issues include whether driver education should be provided in different ways in order to save limited education dollars, whether the private sector or some combination of public schools and private sector should provide it, and how state administration of driver licensing may need to adjust to changes, if any.
- ▶ **All-Terrain Vehicle Helmet Requirements**—Current Utah law requires ATV riders under age 18 to wear a helmet. In the last 19 years, 4,541 deaths occurred from ATV accidents throughout the United States; 80 of these deaths occurred in Utah. Experts agree many serious injuries could be prevented if riders would wear an approved helmet. The key issue is whether the helmet requirement should be extended to all riders.
- ▶ **Transportation Revenue - Motor Fuel and Special Fuel Taxes**—Utahns are paying less fuel taxes per vehicle today than they have in 17 of the last 18 years. This is because fuel tax revenues are relatively flat and do not grow with inflation. Fuel taxes are the primary means of funding highways in Utah and account for 85 percent of the Transportation Fund. With the limitations of fuel tax revenue, mounting highway needs, and the recent \$66.4 million General Fund reduction to the Centennial Highway Fund, the Legislature may address critical highway funding needs.