

Key Issues for the 2005 General Session

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

- ▶ **Common Interest Ownership Act and Planned Unit Developments** – Common interest communities--including condominiums and planned unit developments--are communities where the property owners own individual portions of property with joint obligations for maintenance, taxes, and insurance of the common areas. Utah has the Condominium Ownership Act governing condominiums, but there exists no equivalent law for planned unit developments. In 2004, the Legislature created the Community Associations Act that outlines the governance issues involved in a planned unit development, but other issues are still unresolved in the law. Legislation may be introduced to address this issue.
- ▶ **Economic Development Incentives** – Legislation is being considered that would authorize the Department of Community and Economic Development to create economic development zones under certain conditions and provide tax incentives to attract new commercial projects in economic development zones.
- ▶ **Health Provider Reimbursement "Any Willing Provider" Laws** – Some individuals in Utah have expressed frustration when they are unable to see health care providers of their choice because their health plan will not pay for the services of non-contracted providers. Any willing provider laws or freedom of choice laws typically permit an enrollee to obtain reimbursable medical services from any qualified provider even if the provider has not signed a contract with the plan. Legislation that addresses this issue may be introduced.
- ▶ **Motion Picture Incentive Fund** – The Motion Picture Task Force is recommending legislation to create the Motion Picture Incentive Fund. The proposed fund would receive an ongoing \$3 million appropriation subject to budget constraints. Two-thirds of the fund would provide incentives for within-the-state productions of television series and made-for-television movies, and one-third would provide incentives for within-the-state productions of motion pictures. The legislation would also grant the executive director of the Department of Community and Economic Development authority to determine the structure, amount, and nature of the incentives given, subject to the ratification of the Board of Business and Economic Development.
- ▶ **Proprietary Postsecondary Schools** – In 2002, regulation of postsecondary proprietary schools was transferred from the Board of Regents to the Division of Consumer Protection. Legislation will be introduced that allows the Division to better regulate schools.
- ▶ **Special Warranty Deed** – Two primary deeds exist in Utah: quit claim deeds, that deed whatever ownership a person has in a property at the time of the deed; and warranty deeds, that guarantee a title is clear of encumbrances at the time of the deed. Legislation will be

introduced to create a new type of deed--a special warranty deed--that only warrants the title for the time the owner owns the property.

- ▶ **SUTA Dumping** – Legislation will be introduced to halt SUTA (State Unemployment Tax Act) dumping, in which a corporation forms a new subsidiary to qualify for a lower unemployment tax rating and then moves many of its workers to the subsidiary.
- ▶ **Tourism Funding** – To promote tourism in Utah, the Legislature may consider funding the statewide advertising, marketing and branding campaign. Legislation may be introduced that would establish a nonlapsing Tourism Marketing Performance Fund. An initial \$10 million appropriation in 2004/2005 would be reduced by \$1 million each year, giving the fund 10 years to become self-sustaining from interest earned by the fund and a portion of state sales and use tax revenues.

EDUCATION

- ▶ **Brief of Amicus Curiae Utah Legislature** – In response to an invitation by the Utah Supreme Court, the Legislature filed a friend-of-the-court brief in a lawsuit filed by the University of Utah against the Attorney General. The lawsuit stems from the Attorney General's opinion on the constitutionality of the University of Utah's firearms policies. In the brief the Legislature argues that the University is not an autonomous entity free from legislative control, but is subject to legislative enactments, including firearms statutes. The Legislature contends that Article X, Section 4 of the Utah Constitution does not establish the University as a separate entity, but renders the University a public corporation while solidifying the Legislature's plenary authority to govern higher education. Additionally, the Legislature argues that Article I, Section 6 of the Utah Constitution gives the Legislature the sole right to define "lawful use of arms," and that any University policies regarding firearms violate that provision. The court is likely to issue a decision sometime in 2005.
- ▶ **Carson Smith Special Needs Scholarships** – In the 2004 General Session, the Legislature passed a bill granting scholarships to students with disabilities to attend private schools. The bill was vetoed by the governor. A similar bill is expected to be filed in the 2005 General Session.
- ▶ **Charter Schools** – The State Charter School Board has identified numerous issues that they would like the Legislature to address, including: 1) termination of charter schools; 2) charter schools' duty to comply with procurement laws; and 3) funding formulae.
- ▶ **School Buildings** – Projected school enrollment growth will require many new schools to be constructed in Utah. Legislation to aid districts faced with rapid enrollment growth and to control school building construction costs may be introduced.
- ▶ **Teacher Recruitment and Retention** – Utah is expected to experience a teacher shortage in the near future. Legislation designed to enhance the recruitment of teachers in Utah and improve retention will be introduced.

HEALTH AND HUMAN SERVICES

- ▶ **Medicaid** – Utah faces many of the same pressures encountered by other states to increase Medicaid spending. Nationally, Medicaid spending is expected to increase at least 8 percent annually over the next several years.

JUDICIARY, PUBLIC SAFETY, AND CRIMINAL JUSTICE

- ▶ **Drug Treatment Policy** – Providing effective substance abuse treatment for offenders in prison and in the community is a continuing challenge. Legislation may be introduced, for incarcerated offenders, to include increased drug treatment and education in prisons, expand the Utah's Drug Board, and implement a post-adjudication drug court or re-entry system upon their release. Legislation may also be introduced, for offenders not yet incarcerated, to expand Utah's drug court system, increase substance abuse treatment options, and implement an intermediate sentencing option of delaying jail time as a condition of probation while an offender receives substance abuse treatment.
- ▶ **Sex Offender Treatment Policy** – The number of convicted sex offenders in the juvenile and adult criminal justice systems continues to grow, and there is concern that the funding for treatment of these individuals is not keeping pace with this growth. Many sex offenders suffer from multiple conditions, such as mental illness, substance abuse, and low functioning or social inadequacies, which may be improved with treatment.

NATURAL RESOURCES, AGRICULTURE, AND ENVIRONMENT

- ▶ **Radioactive, Hazardous, and Non-hazardous Waste Disposal** –The Department of Environmental Quality regulates the disposal of certain types of waste in the state including hazardous, non-hazardous, and low level radioactive waste. Under current law, class B and C low level radioactive waste may not be disposed of in Utah without the approval of the legislature and the governor. Legislation will be introduced that will require the review of long term funding needs for radioactive and hazardous waste disposal, increase the maximum penalty on violators of certain waste regulations, and eliminate a mixed waste tax exemption. Legislation banning Class B and C low level radioactive waste may also be introduced.
- ▶ **Water Rights Enforcement and Penalties** –The State Engineer has responsibility for the enforcement of water rights. To reduce the time needed to investigate and prosecute those who use water for which they do not have a water right, and to provide a deterrent, legislation will be proposed that will clarify the State Engineer's powers and duties, modify enforcement procedures, and increase penalties for stolen water.

PUBLIC UTILITIES AND TECHNOLOGY

- ▶ **Acquisition of New Energy Resources** –When a public utility in Utah acquires energy resources, the Public Service Commission evaluates the utility's decision. If ruled in the utility's favor, the Public Service Commission will allow recovery of the new costs through an increase in rates. Legislation that addresses the adequacy of this process for acquisition of new energy resources may be introduced.
- ▶ **Emergency Related Amendments** – In an Energy Policy Task Force Meeting during 2004, task force members questioned agency representatives about responsibilities in planning for an energy emergency in the state. Because agencies have not determined responsibilities should an energy emergency occur, legislation addressing this issue will be introduced.
- ▶ **Information Technology Governance** –The Utah Technology Commission has been studying how to improve the governance of state information technology with an emphasis on enterprise management model. The state has utilized a distributed computing model with some provision of centralized computer services since the late 1980s. Because of changes in technology, the adoption of a enterprise management model may save money and provide increased efficiency.
- ▶ **Telecommunication Law Revisions** –The Public Utilities and Technology Interim Committee has been reviewing changes in the telecommunications market after the Telecommunications Reform Act passed in the 1995 General Session. Because of increased competition and new technologies, significant changes in the telecommunications market have transpired, and revisions to existing laws may be necessary.

RETIREMENT

- ▶ **State Employee Compensation** – The Legislature may consider issues related to compensation of state employees. Salary increases for state employees have not kept up with inflation. COLAs (Cost-of-living adjustments) in the last five years have been about 1/3 of the inflation rate. State employee salaries are 19.9 percent lower than the market. The state spent \$769.4 Million in FY 2004 for total salaries, wages, and other compensation from all funds, up \$12.4 Million from FY 2003, but down \$10.8 Million from FY 2002. The 51st percentile salary for state employees on the General Pay Plan is \$31,428 while 50 percent of state employees on the General Pay Plan make between \$23,970 and \$41,239. On the other hand, state employee benefits are 1.22 percent above the aggregate in the private sector.

REVENUE AND TAXATION

- ▶ **Corporate Income Tax** –The Individual Income Tax and Corporate Franchise and Income Tax Task Force may present recommendations to the Legislature changing certain provisions of the state corporate income tax. Other recommendations that may be submitted by individual members of the task force include: replace the current individual income tax system with a "single rate" or "flat rate" system and with few or no deductions or credits; repeal the deduction for federal income taxes; adjust the brackets for inflation; reduce the current number of brackets and widen the income range of each bracket; adopt a state earned income tax credit; and limit the number of personal exemptions that may be claimed by a taxpayer.
- ▶ **Implementation of the Streamlined Sales and Use Tax Agreement** –The Streamlined Sales and Use Tax initiative is an effort of about 30 states to simplify and make uniform state laws and administrative practices governing the sales and use tax. The Legislature enacted legislation during its 2003 and 2004 General Sessions to conform Utah's laws to this agreement. After the close of the 2004 General Session, it became apparent that some of these new provisions could result in tax increases for some taxpayers and could also impose new compliance costs for some businesses. Because of these concerns, the Legislature met in special session in June 2004 to delay the effective date of some provisions until July 1, 2005. The Legislature may consider legislation to address some of the issues regarding these delayed provisions.
- ▶ **Individual Income Tax Deduction for Certain Military Income** – During its September 2004 Special Session, the Legislature adopted legislation that provides, for the 2004 tax year only, a subtraction from federal taxable income for certain income a taxpayer receives for qualifying military service. The Revenue and Taxation Interim Committee has recommended legislation to make this subtraction an ongoing provision.
- ▶ **Uniform Fees on Certain Tangible Personal Property** –The Revenue and Taxation Interim Committee has adopted legislation that changes how fees in lieu of property taxes are imposed on trailers, certain boats, off-highway-vehicles, and other types of personal property. This type of property is now subject to a fee based on the property's market value. Under the new legislation, the fee is based on the age, and sometimes the length, of the property.

STATE AND LOCAL AFFAIRS

- ▶ **Bonding** –The Legislature is expected to consider legislation modifying and recodifying statutory provisions governing the issuance of bonds. The Legislature is also expected to consider issuing bonds for capital projects, highway projects, or bonds to fund other statewide public purposes.
- ▶ **Election Law** –As in recent sessions, there will likely be legislation proposing changes to Utah's Election Code. Election issues that may be addressed include reforms needed in response to the federal "Help America Vote Act," modifications to statutes governing

campaign and financial reporting requirements, and changes to statutes governing candidate vacancies.

- ▶ **GIS (Geographic Information Systems) Data Accuracy in the SGID (State Geographic Information Database)** – GIS is used to facilitate information sharing, decision-making, and policy formulation by many users. Having accurate and up-to-date GIS data is critical to effectively use the GIS tools. An ad hoc workgroup of the Political Subdivisions Interim Committee discussed ways to improve the accuracy and currency of GIS data in the SGID. Recommendations for legislative action include: 1) establish a management structure for the development, maintenance and administration of a statewide GPS (Global Positioning System) Reference Network, which would enable more positionally accurate GIS data; and 2) update and standardize statute provisions regarding the process for reporting governmental boundary changes to the SGID.
- ▶ **LUDMA (Land Use Development and Management Act) Revisions** – During the 2004 interim, a Political Subdivisions Interim Committee member, in cooperation with the Utah League of Cities and Towns, organized a group of interested parties to discuss revisions to the Municipal and County Land Use Development and Management Acts. The group's recommendations would enable local governments to establish locally-relevant processes, provide flexible appeal options, and codify clearly established common law principles.

TRANSPORTATION

- ▶ **Local Highway Authority Participation in Transportation Solutions** – The need for highways in particular areas of the state mostly results from local land use decisions. Local participation on funding state highway improvements is rarely used and not expected. Local governments use sales tax revenue to attract retail sales to their communities, but the increase in traffic on state highways is considered the state's problem. The state may need to ask for more participation from local highway authorities.
- ▶ **Traffic Code Recodification** – The recodification of Title 41, Chapter 6, Traffic Rules and Regulations, which includes the primary traffic laws of the state was undertaken by the Transportation Interim Committee. Several state and local agencies and industry representatives reviewed changes and made suggestions. Legislation will be introduced that updates statutory language, improves organization and readability, and reduces ambiguities, inconsistencies, and conflicts.
- ▶ **Transportation Funding** – Total highway needs through the year 2030 exceed \$22.6 billion as shown in the Long Range Transportation Plans. These needs far exceed existing funding resources. The CHF (Centennial Highway Fund) Program is underfunded requiring an additional eleven years to pay off under current revenues and an additional \$517 million in interest and bonding costs. This jeopardizes a growing list of other needed highway projects not funded under CHF. At the same time, Utahns are paying less fuel taxes per vehicle today than they have in 17 of the last 18 years. The Transportation Planning Task Force has been studying these issues and will make a report in November 2004.