



KEY ISSUES — 2010 GENERAL SESSION

The Office of Legislative Research and General Counsel provides this compilation of some of the key issues that the Utah State Legislature may address during the upcoming session. This document is also online at <http://le.utah.gov>.

December 2009

ADMINISTRATIVE RULES

Department of Human Services Related Parties

Conflict Investigation Procedure. A licensed clinical social worker claimed that the Department of Human Services was violating statute by assigning certain investigations into alleged child abuse or neglect to an agency within the department instead of an independent child protective service investigator under contract with the department. The Legislature may consider sunsetting the administrative rule establishing the separate investigation process and other mechanisms to address the issue.

Public Geothermal Pools and Bathing Places.

Representatives of the Saratoga Springs Homeowners Association expressed concern that the Utah County Health Department's geothermal pool water quality rules are too stringent and have the potential to financially overburden homeowners. The Legislature may consider legislation to address these concerns.

State Implementation Plans and Local Government Regulations Regarding Emissions Inspections.

Representatives of several Weber-Morgan county-area emission inspection businesses expressed concern that in some cases fines for emission testing violations were exorbitant and that some violations were assessed in error. The Legislature may consider ways to address these issues.

BUSINESS AND LABOR

Adoption of a State Construction Code and State

Fire Code. The Legislature will consider legislation concerning a new state construction code. The Legislature may also consider legislation adopting a new state fire code and legislation clarifying the adoption process.

Deferred Deposit Lending. Persons engaged in the business of check cashing or the business of deferred deposit lending must register with the Department of Financial Institutions and follow certain procedures when extending deferred deposit loans. The Legislature will consider legislation amending the Check Cashing and Deferred Deposit Lending Registration Act to

address operation requirements related to deferred deposit lending.

Insurance Related Legislation. The Legislature will consider bills to modify the Insurance Code, including general "clean up" legislation and modifying provisions related to the Utah Life and Health Insurance Guaranty Association Act. The Legislature may also consider legislation to update the terminology in and the structure of the Insurance Code.

EDUCATION

Charter Schools. Charter schools are almost entirely funded with state monies, with only a small contribution from local property taxes. With six new charter schools scheduled to open in August, 2010, legislators are expected to reexamine how charter schools are funded. Legislation to remove the cap on charter school enrollment is also anticipated. Removal of the cap may enhance the state's ability to qualify for a federal education grant.

Education Financing. The ability of school districts to generate revenue through property taxes varies depending upon the property wealth of the school district. At the same time, some school districts have a greater need for property tax revenue due to growing school enrollment necessitating new school building construction. The Legislature is expected to consider legislation to equalize property tax burdens and assist school districts with rapid growth in school enrollment.

Reproductive Health Education. Some school districts in the state offer only abstinence-based reproductive health education with no instruction addressing other methods of contraception. Legislation is anticipated that would make comprehensive reproduction health education available to a student if permitted by the student's parent.

GOVERNMENT OPERATIONS AND POLITICAL SUBDIVISIONS

Assessment Areas. Designation of an assessment area by a local entity allows that local entity to assess the property within the assessment area for the purpose of financing the costs of improvements, operation and maintenance, or economic promotion activities that benefit property within the assessment area. Prior to 2007, an assessment area was commonly known as either a County Improvement District, a Municipal Improvement District, or a Parking and Business Improvement District.

Legislation modifying assessment area provisions will likely be introduced in the 2010 General Session.

Campaign Finance. Requiring electronic filing of campaign reports, requiring more expenditure detail, and providing dollar contribution limitations are methods being discussed to increase transparency on financial disclosure statements to allow the public to better determine how campaign money is spent and who received the money.

Land Use. The Legislature has given to municipalities and counties generally broad authority, though there are some restrictions and requirements, over regulating land use. A municipality regulates land area within its municipal boundary. A county regulates land area within the unincorporated part of the county. Legislation modifying requirements and restrictions for public notice, subdivisions, transferable development rights, applicability to other government entities, and zoning will likely be introduced in the 2010 General Session.

Local Entity Boundary. The Legislature has outlined in statute the processes whereby a municipality, county, or other local entity may change its boundary through incorporation, dissolution, consolidation, division, annexation, withdrawal, or boundary adjustment. Legislation modifying requirements and restrictions for some of these processes will likely be introduced in the 2010 General Session.

One-Year Lobbying Ban. Current statutory provisions prohibit a former legislator and other state officers from lobbying state public officials for one year after leaving office. An exception is made for lobbying on behalf of a business that the former state officer is associated with, unless the primary activity of the business is lobbying or governmental relations. Some groups suggest eliminating some of the exceptions.

Public Officer Ethics. This interim the Legislature created a joint Ethics Interim Committee to look at ethics reform issues relating to legislators. After reviewing several aspects of reform the committee passed unanimously, "Joint Resolution on Ethics Complaint Procedures." The resolution changes the current process by which complaints are filed and heard by the Legislature in several ways. The most significant change is the creation of a nonpartisan commission to first hear ethical complaints against legislators.

HEALTH AND HUMAN SERVICES

Abortion. Recently, a 17-year old pregnant girl allegedly hired a man to beat her in order to end her pregnancy. An Eighth District juvenile court judge held

that under existing law she could not be prosecuted for criminal solicitation to commit murder. In response, the Health and Human Services Interim Committee has recommended draft legislation that amends provisions of the Utah Criminal Code to describe the difference between abortion and criminal homicide of an unborn child and to remove prohibitions against prosecution of a woman for killing an unborn child or committing criminal homicide of an unborn child. The state has filed a notice that it will appeal the juvenile court judge's ruling.

Federal Health Reform. Congressional health reform proposals have the potential to affect Utah's Medicaid program, the state's regulation of health insurance, Utah insurers, Utah medical care providers, Utah employers, and Utah consumers. The Legislature may consider legislation in response to federal legislation, either proposed or adopted, including legislation that would allow the state to "opt out" of federal reform.

State Health Reform. During the 2007, 2008, and 2009 general sessions, the Legislature enacted legislation designed to lay a foundation for significant health care reform. Several follow-up pieces of legislation have been developed by the Health System Reform Task Force and will be introduced during the 2010 General Session. Other follow-up legislation may be introduced, including legislation relating to the Utah Health Exchange—the second of only two health insurance purchasing exchanges in the country. The Exchange becomes fully operational January 1, 2010, but by design will serve only a limited number of enrollees. To facilitate future enrollment expansion, legislation may be necessary to address the sharing of risk across participating insurers.

Substance Abuse. Substance abuse continues to take a large toll on individual lives and state agency budgets. The Legislature will consider six bills recommended by the Health and Human Services Interim Committee that address the scheduling of controlled substances, the reporting of overdoses, the use of the Controlled Substance Database, and the statutory definitions upon which state regulators and the law enforcement community rely. Other legislation related to substance abuse may also be introduced.

Tobacco. Raising the tobacco tax has been suggested both as a way to address state revenue needs and a way to promote public health by discouraging smoking and funding public health related programs. Legislation to raise the tobacco tax will likely be introduced for the second time in as many years during the 2010 General Session.

JUDICIARY, LAW ENFORCEMENT AND CRIMINAL JUSTICE

Expungement Revisions. A person arrested or convicted of a crime may be permanently barred from certain privileges in society, if an expungement is not available. There is some controversy surrounding the issue of expungement. Legislation will be introduced that sets out the steps a petitioner must take to

obtain an expungement, and specifies which offenses may not be expunged. The proposed legislation provides notice of a petition for expungement to the prosecutor, the victim, and in the court's discretion, the Division of Adult Probation and Parole. The Bureau of Criminal Identification may charge application and issuance fees for a certificate of eligibility for expungement and may deny a petitioner a certificate of eligibility if the petitioner provides false or misleading information on an application.

Inmate Health Insurance. Medical care for inmates in Utah's prisons costs Utah taxpayers approximately \$28 million in Fiscal Year 2009. The Utah Department of Corrections reported that there are a few inmates in the Utah prison system who have health insurance benefits through a spouse's employer or other private contract but are not using their benefits because the state is paying for their care. Legislation will be introduced that provides that if an insured is otherwise eligible for health or dental benefits under an existing policy, an insurer may not exclude coverage for an insured who is an inmate housed in a correctional facility or an offender in the custody of the Department of Corrections. The legislation specifies other requirements and exempts injuries to the insured caused by self harm or as a result of physical violence committed either upon or by the inmate.

Post Conviction Remedies. Due to concerns regarding the frequent use of Utah's Post-Conviction Remedies Act for inmate appeals, this legislation will amend a section of the act to clarify that the exemption relating to a claim of ineffective counsel is the only ground for relief available under the act.

NATURAL RESOURCES, AGRICULTURE, AND ENVIRONMENT

Canal Safety. In July, 2009, a portion of a hillside in Logan, Utah gave way, breached a canal barrier, and sent tons of water and debris cascading into a neighborhood below. The Governor and Legislature have been studying whether regulation of canals is needed to protect the public. It is expected that legislation will be introduced addressing canal safety.

Stream Access. In 2008, the Utah Supreme Court issued an opinion in the case of Conatser v. Johnson which addressed the scope of recreation access from public waters onto private stream beds. It is expected that legislation will be introduced clarifying or modifying the Conatser case.

PUBLIC UTILITIES AND TECHNOLOGY

Internet Security. Internet fraud such as phishing, pharming, identity theft, and cybersquatting are

continuing to evolve and as a result existing laws need to be updated. Draft legislation, Utah E-Commerce Integrity Act, has been prepared which addresses the new fraudulent acts and prohibits certain related behavior.

Natural Gas Vehicle Fuel Infrastructure. Individuals and public and private sector entities use natural gas vehicles in their fleet services, but that use is limited due to few natural gas fuel stations across the state. The Legislature may consider legislation to increase the number of natural gas fuel stations.

Renewable Energy Definition. The existing renewable energy definition does not include new energy-generation technology developments. The Legislature may consider legislation that broadens the definition to include new processes, such as compressed air technology for methane and other gases.

REVENUE AND TAXATION

Cigarette and Tobacco Taxes. The state currently imposes a tax on cigarettes at a rate of 69.5 cents per pack. In addition, a tax is imposed on moist snuff (75 cents per ounce) and on other tobacco products (35 percent of manufacturer's sales price). Various measures (the number of taxable packs per capita sold, total packs sold, and percentage of adults who say they smoke) indicate a declining tax base over the past thirty years. The tax rate has been periodically increased over time, with the last increase in the cigarette tax in 2002. Legislation may be introduced to address the taxation of cigarettes, moist snuff, or other tobacco products.

Estimated Quarterly Payments for Individual Income Tax. Currently, wage-earners have individual income taxes withheld from each paycheck, spreading the collection of income taxes throughout the year. Those with non-wage income, such as business income or capital gains, are not subject to the same requirements for non-wage income. Legislation may be introduced to require quarterly estimated tax payments for households with income above certain thresholds.

Sales and Use Tax on Food. Prior to 2007, food and food ingredients ("food") were taxed the same as most other items within the sales and use tax base. With legislation enacted during the 2006 and 2007 General Sessions, the Legislature reduced the state sales and use tax rate on food to 1.75 percent and removed food and food ingredients from the tax base of all local option sales and use taxes other than the 1 percent local option and .25 percent county option sales and use taxes. As a result, food is now taxed at a uniform 3.0 percent statewide. Food is both one of the more stable components of the sales tax base as well as one of the more regressive components. Legislation may be introduced relating to reinstating the sales and use tax on food.

Sales and Use Tax – Seller Discount. Certain sellers that collect sales and use tax revenue are required to file a return and remit sales and use taxes monthly. Those that remit on a monthly

basis, typically large companies, may retain a certain percentage of the sales and use tax revenue that they collect as a "seller discount" as compensation for the cost of collecting and remitting the tax. Legislation may be introduced to eliminate the seller discount for monthly sales and use tax filers.

Tax on Certain Food and Beverages Sold by a Restaurant. Counties are currently authorized to impose a tax of 1 percent on sales of certain food and beverages sold by a restaurant. Revenues from the tax may be used for various tourism-related purposes, such as airports, convention centers, and cultural facilities. Legislation may be introduced to eliminate this tax and authorize counties to impose an additional general sales and use tax of .1 percent to mitigate the fiscal impact of eliminating the tax.

RETIREMENT

Defined Benefit Reform. The Utah State Retirement System operates on an assumed annual rate of return of 7.75 percent. To keep the system actuarially sound, the overall rate of return must equal that assumed rate over time. When that rate of return is not met, contribution rates must be increased accordingly. The recent downturn has prompted renewed study on ways to reduce the state's retirement liability. Several options have been discussed.

Funding Employee Health Care Premiums. Health care costs continue to increase. During each of the last three years, health care premium increases have been absorbed by the state by increased employee premium shares, increased co-pays, and reduced benefits. In FY 2010, state employees are paying five percent of the premium share. Without significant changes these trends are likely to continue.

Funding Retirement Contributions Rates. For FY 2011, the Retirement Board has recommended a contribution rate of 16.32 percent of salary for the state and school employees in the Public Employees Noncontributory Retirement System. This is an increase of 2.1 percent of salary from the 14.22 percent of salary contribution rate paid during the previous four fiscal years. The 16.32 percent of salary rate is also the highest contribution rate since the creation of the noncontributory system in 1987. The state will need to fund an additional \$75 million to fund this contribution rate increase. Similar increases are projected to be needed in each of the next four to six years.

Post Retirement Employment. The Office of the Legislative Auditor General released an audit in November 2009 titled "A Performance Audit of the Cost of Benefits for Reemployed Retirees and

Part-Time Employees." The audit calls for an end to current incentives for public employees to retire early and return to work. Premature retirement means retirees begin drawing their allowance earlier than anticipated, which results in a negative financial impact on the retirement system. The audit also includes findings on retirement service credit and health benefits for part-time employees.

TRANSPORTATION

Transportation Funding. As a result of inadequate funding to maintain and preserve the entire state highway system, the preservation of some less traveled highways has been and will be postponed. Continuing to postpone highway maintenance and preservation projects could lead to more expensive maintenance options or even reconstruction. The Legislature may consider what the state's road construction and maintenance priorities are and funding options for these priorities.

WORKFORCE SERVICES AND COMMUNITY AND ECONOMIC DEVELOPMENT

International Trade & State - Federal Relations. State governments currently have a limited role in international treaty negotiations. However, the federal government is now reorganizing the process for additional state involvement. The Utah International Trade Commission is statutorily charged with promoting international trade with Utah businesses and monitoring treaty negotiations while authorized to meet four times a year. Legislation has been prepared that encourages Congress to provide states more access to the treaty negotiation process, and additional legislation is being discussed to increase the number of Commission meetings and duties.

Manufacturing Incentives. Making significant capital investments is difficult for businesses in the current economy. The Legislature may consider providing a tax credit to existing businesses whose capital investments expand operations within the state and maintain or increase their existing Utah workforce.

Qualifying for Unemployment Insurance Benefits. How the state defines "base period" for unemployment insurance applicants directly impacts their eligibility to receive unemployment insurance benefits. As a means to qualify for federal stimulus monies, the Legislature may consider modifying the definition of "base period" for an individual claiming unemployment insurance benefits whose benefit year is effective on or after January 2, 2011.

Social Security Offset. Current law provides that, for individuals who are eligible to receive both Social Security and unemployment compensation, the amount of unemployment insurance benefit they receive is reduced, or offset, by 50 percent of their Social Security benefit amount. The offset, if allowed to lapse from law July 1, 2010, would then rise to 100 percent of the Social Security benefit amount. The Legislature may consider eliminating the Social Security offset, while maintaining revenue neutrality by reducing the weekly benefit amount by \$3.