

2016 LEGISLATIVE UPDATE

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A cooperative project of:

**Utah Prosecution Council
Statewide Association of Prosecutors
Davis County Attorney's Office
Layton City Attorney's Office
Salt Lake County District Attorney's Office
Utah Attorney General's Office
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Legislative Summary 2016 General Session

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This document is a publication of the Utah Prosecution Council

This publication constitutes summaries of legislation passed during the 2016 General Session of the Utah Legislature relating to criminal law and criminal procedure and to county and city government.

The publication contains summaries only, not the full text of bills. There is no substitute for reading the actual legislative language. Enrolled copies of bills passed during the 2016 General Legislative Session can be obtained by going to the Utah Legislature's web site: <http://le.utah.gov>. Please note that each bill number in this document is hyperlinked so the enrolled copy may be accessed by clicking on the bill number. You may also call Utah Prosecution Council (UPC) at (801) 366-0202, or the Statewide Association of Prosecutors (SWAP) at (801) 366-7809. Either office will be glad to e-mail or fax a bill to you.

Beginning April 8, 2016, this publication will be downloadable from the Utah Prosecution Council web site: www.upc.utah.gov.

**UNLESS OTHERWISE INDICATED, LEGISLATION PASSED
DURING THE 2016 GENERAL LEGISLATIVE SESSION
BECOMES EFFECTIVE ON MAY 10, 2016.**

All legislation passed during the 2016 General Legislative Session is accessible over the Internet at the web site maintained by the office of Legislative Research and General Counsel: www.le.utah.gov. When accessing or downloading a bill from that website, put your cursor over “Bills” on the left side, then click on “Passed Bills.” On the Passed Bills page, scroll to the bill for which you are looking and click on the hyperlinked bill number.

As of May 10, 2016, the effective date of most legislation passed during the 2016 general legislative session, the *ONLY* place one will be able to access an updated text of the Utah Code is on the Utah State Legislature’s web site: www.le.utah.gov. On the left side of the page is a column of links; move your cursor to “Utah Code/Constitution,” then click on “Title/Chapter/Section” or on “Utah Constitution.” Links to the various titles of the Utah Code or articles of the Utah Constitution will appear. Scroll down to the title or article in which you are interested and follow the links from there. If you want to do a word search for specific text, click on “Keyword Search” and follow the instructions.

A digest of all legislation, including effective dates, an index by subject matter, an index by bill number, a listing of bills which did not pass, and other useful material is also on the above cited legislative web page, and is published by:

The Office of Legislative Research and General Counsel
436 State Capitol Building
Salt Lake City, UT 84114

Phone: (801) 538-1032

The printed Utah Code, 2016 Edition will contain all amendments made to the code during the 2016 General Session and any special sessions, together with a comprehensive index. It will likely become available in late summer. Utah Codes are published by both Lexis Law Publishing and Thomson-West. They can be contacted at:

<p>LexisNexis 620 East Timpanogos Circle Building H Orem, UT 84097</p> <p>Phone: (801) 354-8000 Web site: http://www.lexisnexis.com/store/catalog/catalog.jsp?pageName=catalogProducts&catId=993&id=404</p>	<p>Thomson Reuters Publishing 610 Opperman Drive Eagan, MN 55123</p> <p>Phone: (888) 728-7677 Web site: http://legalsolutions.thomsonreuters.com/law-products/search?q=utah+code&r=13001&s=KEYWORDSEARCH&x=18&y=7&</p>
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HOUSE BILLS

INITIATIVE AND REFERENDUM AMENDMENTS

HB 10

Rep. Brian Greene

This bill:

- decriminalizes the failure to put language on the petition that says you read and understand the petition (what?);
- expands the definition of “local law” to include “other legislative action of a local legislative body” (can you act legislatively other than by a resolution or ordinance?);
- requires the local clerk to furnish to the sponsors of the petition a copy of the petition and a signature page within 5 days of receiving the application;
- starts the 45 day clock from the time the petition is received from the clerk instead of from when the law was passed; and
- does some minor housekeeping.

Be aware of the 5 day turn around requirement and the new timing of the 45 day period.

AMENDS: 20A-1-609, 20A-7-101, 20A-7-504, 20A-7-601, 20A-7-602, 20A-7-603, 20A-7-604, 20A-7-606 and 20A-7-613

DISASTER RECOVERY FOR LOCAL GOVERNMENTS

HB 12

Rep. Curtis Oda

This bill modifies the Public Safety Code and the Budgetary Procedures Act to provide emergency disaster services loans to local governments. The bill sets forth application priority and repayment terms that encourage local government to establish and properly fund local government disaster funds.

PRACTICE POINTER:

Local government would be well advised to allocate sufficient funds to their local government disaster fund.

AMENDS: 53-2a-602, 53-2a-603 and 63J-1-314

ENACTS: 53-2a-607, 53-2a-608 and 53-2a-609

ALCOHOLIC BEVERAGE EVENT PERMIT AMENDMENTS

HB 13

Rep. Curtis Oda

This legislation added safeguard requirements to the application criteria for someone seeking an event permit to serve alcohol. Specifically, the wording attempts to minimize the risk of minors being served alcohol or adults being over served alcohol.

The bill requires no action by local governments other than to disseminate the additional criteria to the appropriate licensing staff.

AMENDS: 32B-9-202

OFFENDER REGISTRY AMENDMENTS

HB 16

Rep. Jack Draxler

In 77-41-112 there is a list of offenses for which the offender may be removed from the Sex Offender and Kidnap Offender Registry after 5 years from the completion of the offender's sentence, if the offender has met other requirements including treatment, payment of restitution, etc. This bill adds to that list Class A misdemeanor convictions of Enticing a Minor 76-4-401 and Voyeurism 76-9-702.7.

If the court denies the petition to remove the offender from the registry, the offender may not submit another petition for 3 years.

It is of particular importance to note that when a petition is received to remove the offender from the registry the prosecutor shall notify the Sex and Kidnap Offender Registry Office in the Department of Corrections as well as the victim, as is currently required.

AMENDS: 77-40-105, 77-41-105 and 77-41-112

ASSESSMENT AREA FORECLOSURE AMENDMENTS

HB 17

Rep. Curt Webb

This bill modifies the methods by which a local entity may enforce an assessment lien.

In regard to foreclosures of assessment liens that are initiated after May 10, 2016, a local authority may sell the subject property through either a judicial foreclosure or after the manner of a property tax sale or trust deed foreclosure. The remedies are cumulative.

In order to do a quasi-trust deed foreclosure, the entity must have had the property owner execute an owner consent form that explains such a sale may occur if the assessment becomes delinquent.

ENACTS: 11-42-502.1

AMENDS: 11-42-202, 11-42-207 and 11-42-502

ELECTION REVISIONS

HB 21

Rep. Steve Eliason

This bill requires election officers to publicly release the results of all absentee and provisional ballots on the day the votes are counted between election day and the final canvass. Initially, Rep. Eliason wanted to require public disclosure each day. The County Clerks, however, requested that the requirement be limited to publication when counted. Election officers may request permission from the lieutenant governor to delay publishing the results for “the minimum number of days necessary” if the public disclosure would likely result in disclosing a vote cast by an individual voter.

The bill imposes an additional work load on the County Clerks and their election officers in that they will very likely be required to publish election results multiple times between election day and final canvass.

AMENDS: 20A-3-309

PRIVILEGE TAX AMENDMENTS

HB 23

Rep. Jon Stanard

This bill partially addresses concerns raised by the Supreme Court’s interpretation of the Nonexclusive Possession Exemption in *Alliant Techsystems, Inc. v. Salt Lake County Board of Equalization, et al.*, 2012 UT 4. A privilege tax is imposed on the beneficial use and possession of exempt property by a for profit entity, if the for profit entity holds exclusive possession. The Alliant court held “courts must examine whether the user or possessor has a present right to occupy and control the exempt property akin to that of an owner or lessee” including “power to exclude the property owner from occupying the property.” *Id.* ¶ 33. Several tribunals, including the district court, misapplied this latter requirement by confusing occupying with access, thus defeating the tax. Amendments in the bill clarify “a lessee, permittee, or holder of an easement still has exclusive possession of the premises if the owner has the right to enter the premises, approve leasehold improvements, or inspect the property.”

AMENDS: 59-4-101

EFFECTIVE DATE: This bill has retrospective operation to January 1, 2015.

PROPERTY TAX CHANGES

HB 25

Rep. Daniel McCay

HB 25 changes the “new growth” calculation for purposes of the certified tax rate. New growth from locally assessed personal property is now excluded from the certified tax rate calculation. New growth from locally assessed real property is calculated in the same manner as before, but it will no longer be offset from negative new growth that may result from centrally

assessed properties. New growth from centrally assessed properties is now measured from a historical high water benchmark starting in 2015. In the event the high water benchmark results in a substantial mismatch with future values (i.e. a closure of a large centrally assessed taxpayer), the Tax Commission must notify the Revenue and Taxation Interim Committee for review.

HB 25 also provides that “incremental value” that is “no longer provided to an agency” (RDA etc.) is included as new growth for purposes of the certified rate calculation. As such, new growth from locally assessed real and personal property and centrally assessed properties captured within the incremental value will return to the taxing entities once the agency no longer receives the incremental value from a project area.

PRACTICE POINTER:

Since new growth from locally assessed personal property can now only be captured within incremental value for a redevelopment agency, taxing entities may want to establish a project area within a redevelopment agency to capture the new growth for capital intensive personal property projects. Additionally, incremental value also includes “reappraisal” value, which is normally excluded from the new growth for certified rate purposes. These two factors may make redevelopment agencies an attractive tool to capture new growth.

FISCAL NOTE: \$ 3,250,000 annually to local taxing entities.

AMENDS: 20A-7-613, 53A-16-106, 53A-16-113, 53A-17a-103, 53A-17a-133, 53A-17a-164, 53A-19-105, 59-2-102, 59-2-913, 59-2-919, 59-2-924, 59-2-924.3, 59-2-926 and 63I-1-259

EFFECTIVE DATE: January 1, 2017

GOOD LANDLORD PROGRAM AMENDMENTS

HB 30

Rep. Gage Froerer

Good-bye good landlord programs – as we know them. It is not the landlord’s discretion whether to participate in the program and local governments cannot require consumer (credit?) reports, RAP sheets, a copy of the lease agreement, or prohibit the landlord from passing the “disproportionate rental fee” on to the tenants. And you cannot require the landlord to notarize any of the documents you might require from the landlord. It expands the definition of residential landlords to include their property management folks.

AMENDS: 10-1-203.5

ENTERPRISE ZONE AMENDMENTS

HB 31

Rep. Scott Sandall

Effective for the 2016 taxable year, this bill allows a business entity to claim a non refundable enterprise zone tax credit issued by the Governor’s Office of Economic Development,

which may be carried over for up to three years, and eliminates the tax credit for contributions to private non profits. The bill also increases the maximum county population for an enterprise zone to 70,000 and, within such a county, increases the maximum municipal population to 20,000. On or before October 1, 2018, and every five years thereafter, the Revenue and Taxation Interim Committee shall study the tax credit and make recommendations to the Legislative Management Committee concerning whether the tax credit should be continued, modified, or repealed.

AMENDS: 63N-2-202, 63N-2-203, 63N-2-204, 63N-2-210, 63N-2-211 and 63N-2-213
ENACTS: 59-7-614.10 and 59-10-1036

EFFECTIVE DATE: This bill became effective on March 1, 2016, upon being signed by the governor.

RETROSPECTIVE OPERATION:

The bill has retrospective operation for a taxable year beginning on or after January 1, 2016.

SUBDIVISION BASE PARCEL TAX AMENDMENTS

HB 32

Rep. Curt Webb

County Treasurers will want to take note of this bill. It deals with tax payment on subdivided parcels. The bill enacts legislation that describes the procedure for paying taxes on a base parcel that is legally subdivided into one or more parcels, providing a mechanism for redeeming subdivided parcels. If a person timely pays a subdivided lot's proportional share of the property tax on the base parcel, and the tax on the base parcel becomes delinquent, the subdivided lot will not be subject to lien, penalty or interest. The bill also modifies the requirements for a notice of a property tax delinquency.

AMENDS: 59-2-102, 59-2-1332.5, 59-2-1346 and 59-7-302
ENACTS: 59-2-1331.5

ELECTION LAW AMENDMENTS

HB 48

Rep. Daniel McCay

This bill amends the Campaign Financial Disclosure requirements of UCA 17-16-6.5 and makes corresponding updates to multiple sections of the Election Code (Title 20A). Section 17-16-6.5 required counties to adopt an ordinance establishing campaign finance disclosure requirements for candidates for county office and for local school board office that reside within the county.

The bill requires county clerks to disqualify candidates who do not file the campaign disclosure financial report. A county clerk may notify a candidate of his or her failure to file the required report and must provide the candidate with a 24 hour grace period to file the report. The bill also imposes a fine of \$100.00 on the candidate for failing to file the report and forbids the political party of a disqualified candidate from replacing the candidate.

PRACTICE NOTES: Counties need to review their campaign financial disclosure ordinances and revise them to indicate that candidates who fail to file the required reports either initially or after the 24 hour grace period will be disqualified.

AMENDS: 17-16-6.5, 20A-1-501, 20A-9-101, 20A-9-406, 20A-11-103, 20A-11-204, 20A-11-206, 20A-11-303, 20A-11-305, 20A-14-104 and 20A-14-203

EFFECTIVE DATE: March 17, 2016, upon being signed by the governor.

ECONOMIC DEVELOPMENT TAX INCREMENT FINANCING AMENDMENTS

HB 54

Rep. Rebecca Edwards

This bill allows for the state to pay certain outstanding financial commitments—specifically, partial rebate payments due under agreements initially entered into by GOED before May 5, 2008. The bill creates a restricted account in the State General Fund known as the Economic Incentive Restricted Account from which the state can make payments to a business entity under an agreement initially entered into before May 5, 2008 for a portion of new state revenue (new sales and use tax revenue, new corporate franchise tax revenue, and new individual income tax revenue, etc.) generated by the business entity’s new commercial project. The bill also establishes a procedure for business entities seeking partial rebate payments from the state under this incentive program.

ENACTS: 63N-2-109

HEMP EXTRACT AMENDMENTS

HB 58

Rep. Greg Froerer

Given the failure of medical marijuana bills this year (SB 73, SB 89), it turned out that this bill was the closest thing we had to continuing Utah’s move toward medical marijuana. The bill amends 26-56-103, the Hemp Extract Registration statute, which allows use of hemp extract for epilepsy, to require that by July 1, 2016, there be a formal study conducted of those using hemp extract to determine if it is actually effective for epilepsy seizure control. Next, the bill amends the definition of ‘hemp extract’ in 58-37-4.3 to mean a cannabis plant with less than .3% THC (the same) but now one that “is composed of at least [15%] 5% cannabidiol by weight” – meaning more will qualify as hemp extract for epileptic medical use in Utah. And, the bill extends the eventual repeal dates of the laws to year 2021.

AMENDS: 26-56-103; 58-37-4.3; 63I-1-226 and 63I-1-258

CLASS B AND CLASS C ROAD FUND AMENDMENTS

HB 60

Rep. Johnny Anderson

This bill amends the apportionment formula for funds available for use on class B and class C roads. The bill is designed to apportion more funds to underfunded counties and municipalities with populations less than 14,000.

AMENDS: 72-2-108

EFFECTIVE DATE: February 12, 2016, upon being signed by the governor.

This bill has retrospective operation beginning on January 1, 2016.

FEES FOR GOVERNMENT RECORDS REQUESTS

HB 63

Rep. Brian King

This bill provides that the adjudicative body which hears an appeal arising from a denial of a fee waiver request shall review the denial of a fee waiver request de novo.

AMENDS: 63G-2-203

WEAPONS ON PUBLIC TRANSPORTATION

HB 67

Rep. Norman Thurston

This bill deletes the prohibition of merely carrying a concealed dangerous weapon or firearm into a bus terminal or on board a bus. Because it's no longer a 3rd degree felony, the bill deleted all the exceptions when carrying such a weapon was permissible.

AMENDS: 76-10-1504, 76-10-1507 and 77-23a-8

POST-EXPOSURE BLOOD TESTING AMENDMENTS

HB 68

Rep. Edward Redd

This bill adds that in addition to a district court judge a magistrate judge may issue a warrant for a blood draw when there's been significant exposure to an emergency services provider or first aid volunteer. It also provides that a law enforcement agency may submit on behalf of the petitioner, by e-warrant or other means, an ex parte request for a warrant ordering a blood draw.

The court or magistrate shall issue a warrant ordering respondent to provide a blood sample within 24 hours and that reasonable force may be used if necessary if the court or magistrate find:

- The petitioner was significantly exposed during the course of performing their duties as an emergency services or first aid provider;
- The respondent has refused consent to the blood draw or is unable to give consent;

- There may not be an opportunity to obtain a sample at a later date; and
- A delay in administering available FDA-approved post exposure treatment or prophylaxis could result in a lack of effectiveness of the treatment or prophylaxis.

Petitioner shall request that a person authorized under 41-6a-523 perform the blood draw. The blood shall be sent to the Department of Health for testing.

If a petitioner does not seek or obtain a warrant pursuant to this section, the petitioner may file a petition in district court seeking an order for testing and to disclose the results.

AMENDS: 78B-8-402

SPECIAL SERVICE DISTRICT AMENDMENTS

HB 77

Rep. Stephen Handy

With respect to 17B-1-302, this bill does not require a member of the board of trustees of a service area described in Subsection 17B-2a-905(2)(a) or (3)(a), who is an elected official of the county appointing the individual, to be a resident with the boundaries of the local district, and, if applicable, the boundaries of the division of the local district from which the member is elected if the elected official was elected at large by the voters of the county.

With respect to 17B-1-505, this bill requires that a withdrawal of an area from a local district, which is approved by voters, be accompanied by a copy of an approved final local entity plat, as defined in Section 67-1a-6.5.

With respect to 17B-1-512, this bill strikes the “as soon as practicable” deadline for a board of trustees to file the notice of an impending boundary action and the final local entity plat and provides alternative, but specifies deadlines for these documents to be filed with the lieutenant governor.

AMENDS: 17B-1-302, 17B-1-505, 17B-1-512 and 17B-1-513

GOVERNMENT EMPLOYEES INSURANCE OFFERINGS AMENDMENTS

HB 81

Rep. Michael Kennedy

This legislation amends the statute to provide that an employee who is ineligible for a contribution to a health savings account under federal law but would otherwise be eligible for a contribution from their employer, the contribution shall be distributed into a health reimbursement account or other IRS approved tax-advantaged arrangement, to the benefit of the employee.

PRACTICE POINTER:

This bill requires no action by local governments other than to disseminate the additional

criteria to the appropriate human resources staff.

AMENDS: 49-20-410

CAMPAIGN FINANCE DISCLOSURES IN MUNICIPAL ELECTIONS

HB 83

Rep. Craig Hall

This bill requires a candidate for municipal office to make a campaign finance disclosure before the municipal primary election. The candidate shall file a campaign finance statement with the municipal clerk or recorder no later than 7 days before the primary election.

AMENDS: 10-3-208

PROPERTY TAXATION AMENDMENTS

HB 104

Rep. Jeremy Peterson

County Auditors championed passage of this bill as a service to their taxpayer constituents, and to save printing and mailing costs. In our increasingly electronic world, we often opt-in to receive notices electronically. The bill gives Auditors discretionary authority to allow taxpayers to opt-in to receive their tax notices electronically, while clarifying their continuing duty to pay taxes or file an appeal. The million dollar question, however, is how does a county auditor “attempt to verify whether a taxpayer receives the [electronic] notice...” You may be asked to opine.

AMENDS: 59-2-102, 59-2-918.5, 59-2-918.6, 59-2-919.1 and 59-2-1004

HUMAN TRAFFICKING REVISIONS

HB 105

Rep. Angela Romero

This piece of legislation amends the Utah Code, making it clear that mistakenly believing a victim to be 18 years of age or older at the time of the alleged offense is not a defense to the crime of human trafficking of a child.

AMENDS: 76-2-304.5

SECURITIES AMENDMENTS

HB 106

Rep. Rich Cunningham

This legislation makes several civil and criminal changes to the Securities Code. Some of the more substantial changes are:

- sanctions are expanded;
- it is an unlawful act to make a false or misleading statement during an examination or

- investigation;
- the statute of limitations is increased to 10 years for administrative actions; and
- the cap on fines is lifted for the courts.

In addition, aggregation of amounts of property, money or other things unlawfully obtained is now allowed in computing level of the offence.

AMENDS: 61-1-3, 61-1-5, 61-1-6, 61-1-9, 61-1-16, 61-1-20, 61-1-21, and 61-1-21.1

ENACTS: 61-1-31

CONTINUING EDUCATION FOR CONTRACTOR LICENSING

HB 112

Rep. Scott Sandall

Every year a certain amount of money is set aside for contractor continuing education. This bill simply expands the types of individuals and organizations that may provide that education to contractors to include entities such as state executive branch agencies, Workers' Compensation Fund, or state or nationally accredited colleges or universities with a campus in the state. In case of electrical and plumbing, it also provides for continuing education for their respective trade organizations. This bill provides for a broader number of resources to be made available to continuing education for the licensed contractors.

AMENDS: 58-55-302.5

CONTROLLED SUBSTANCE REPORTING

HB 114

Rep. Raymond Ward

Ⓡ This is the first of many bills which will have the prescription symbol. During the session, there was a house concurrent resolution (HCR 4) declaring overdose deaths to be a public health emergency because Utah now ranks 4th in the U.S. for overdose deaths overall, and 1st for military overdose deaths. Each of the bills with the symbol are meant to address this problem, without actually increasing penalties, incarceration, or even treatment, for drug offenders. So, the changes these bills make are not really criminal in nature – but they will have an impact on data collection, investigations, and maybe even some plea negotiations.

To begin, HB 114 amends 26-21-26 – General Acute Hospital reporting requirements, to add a requirement that such a hospital report to DOPL poisoning or overdose of any person 12 years or older admitted for the overdose of a prescribed substance.

Next, the bill amends 58-37-8 to read “(1) Prohibited acts A -- Penalties and reporting:” The new reporting part of the criminal statute adds to the possession/use section the following:

(j) The Administrative Office of the Courts shall report to the Division of Occupational and Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (2)(a).

Note that under this new language, the reporting requirement to DOPL only covers convictions for violating the possession / use - (2)(a) -section of the code, not distribution. Thus, in some instances a defendant may be less likely to want to enter a plea for possession versus some type of distribution, especially if the defendant is a professional, concerned about the report that must be made to DOPL. The bill also clarifies the purposes of the reporting requirements, and mandates collection of the data for convictions under this section, under driving under the influence of a prescribed or controlled substance sections, as well as the acute hospital information. And, beginning October 1, 2016, it requires that this information be sent from the courts to DOPL on a daily basis.

AMENDS: 26-21-26; 58-37-8; 58-37f-201; 58-37f-702 and 58-37f-703
ENACTS: 58-37f-704

DUI ENFORCEMENT FUNDING AMENDMENTS

HB 120

Rep. Steve Eliason

This bill increases the administrative impound fee for offenses described in 41-6a-527 from \$350 to \$400. Utah Code 53-1-117 provides funding for alcohol and drug enforcement. One of the sources of this funding is \$97 from the overall administrative impound fees. This bill increases the amount received from \$97 to \$147 from the administrative impound fees and appropriates \$423,200 to the restricted account described in 53-1-117 for fiscal year 2017.

AMENDS: 41-6a-1406

MONITORING EQUIPMENT IN A CARE FACILITY

HB 124

Rep. Timothy Hawkes

This bill is only semi-criminal in nature. It is meant to prevent abuse of elderly folks who reside in assisted living facilities. Abuses by support staff do happen (picture Ben Stiller's character in Happy Gilmore – "You're in my world now, Grandma").

The bill creates the "Assisted Living Facility Surveillance Act." This allows a loved one (legal representative) of a person inside an assisted living facility to give notice to the assisted living facility that they are going to install monitoring equipment in the resident's room, and so long as they give notice and have permission from the resident and any roommate, the living facility must allow the monitoring equipment to be installed. The bill then mandates that there is no civil or criminal liability for the monitoring equipment. (Arguably, such a monitoring device would be unlawful interception of communications under 77-23a-4 – a felony - which is why this Act was created). The bill also states that a person cannot be kicked out of, or denied entry to, an assisted living facility just because they want to set up surveillance for the resident.

ENACTS: 26-21-301, 26-21-302, 26-21-303 and 26-21-304

UNMANNED AIRCRAFT REVISIONS

HB 126

Rep. Kraig Powell

Last summer the presence of unmanned aircraft systems (drones) in the vicinity of wildfires in the western states prompted firefighters to ground their aircraft on several occasions. Not only is this expensive, it adds considerably more risk to an already dangerous endeavor.

In response this Bill adds a new section 65a-3-2.5, Wild Land Fire and Unmanned Aircraft. This section creates a new offense for operating an unmanned aircraft system within an area that is under a temporary flight restriction from either the FAA or another federal, state or local government entity as a result of a wild land fire.

The elements of the crime are that the person recklessly operates an unmanned aircraft within the wild land fire scene.

- Doing so is a Class B Misdemeanor.
- It is a Class A Misdemeanor if the operation of the unmanned aircraft system causes an aircraft being used to contain the wild land fire to drop its payload in a different location or land without dropping the payload.
- It is a 3rd degree felony if the drone comes into actual contact with the manned aircraft.
- It is a 2nd degree felony if the drone is proximate cause of the manned aircraft colliding with the ground, a structure or another manned aircraft.

This, of course raises, at least a couple of legal questions. The first is whether there is a potential *Shondel* issue in creating the crash. No *Shondel* issue is readily apparent as a crash causing a death would contain an addition element and be prosecutable as a homicide.

The next issue is whether this new section is pre-empted by federal law. Unfortunately that is not at all clear at this moment. On December 17th, 2015, the Office of the Chief Counsel of the Federal Aviation Association Administration issued a “fact sheet” on this topic. Although it acknowledged the wild land fire issue it did not address it directly. Rather it gave examples of some issues which are pre-empted and some which are not. There are some rules pending currently regarding the regulation of unmanned aircraft systems but they are not finalized.

The bill also contains some accommodations for drone flights within the areas for law enforcement and some “sanctioned entities” with legitimate needs to operate in the wildfire area. Access for those entities can be granted by the incident commander.

The bill also contains a state preemption clause to prohibit local ordinances governing the private use of unmanned aircraft in relation to a wild land fire.

AMENDS: 63G-18-101

ENACTS: 65a-3-2.5

TRANSPARENCY ADVISORY BOARD MODIFICATIONS

HB 139

Derrin Owens

Adds an individual representing the State Board of Education, appointed by the Board of Education, to the Transparency Board – located within the Department of Administrative Services.

AMENDS: 63A-3-403

DISCLOSURE OF LOCAL CANDIDATES

HB 146

Rep. Paul Ray

Timing can be everything, especially for county and city clerks. Representative Ray's bill provides that, within three business days after accepting a declaration of candidacy, the clerk must post on the county or city website: (1) the name and campaign contact information of the candidate; and (2) the office that the candidate is seeking.

ENACTS: 20A-9-203.5

PROTECTIVE ORDER AMENDMENTS

HB 148

Rep. Angela Romero

This bill changes the findings the court must make and the circumstances under which the court may dismiss a protective order.

A new provision of the law provides that in regard to protective orders for divorced parties, the protective order shall normally automatically expire 10 years from the date on which one of the following occurs: 1) the decree of divorce became absolute; or 2) the protective order was issued.

However, the protective order shall not automatically expire if: 1) the petitioner demonstrates that he or she has a reasonable fear of future abuse; or 2) the respondent has been convicted of a protective order violation. Any incarceration of the respondent will toll the 10 year expiration period.

AMENDS: 78B-7-115

DEATH REPORTING & INVESTIGATION INFORMATION REGARDING CONTROLLED SUBSTANCES

HB 149

Rep. Brad Daw

R Next in our line of prescription abuse bills. Only semi-criminal.

This bill enacts 26-4-10.5 to require that "when the medical examiner determines the death

of a person who is 12 years of age or older ... resulted from poisoning or overdose involving a prescribed controlled substance, the medical examiner shall within three business days ... the ME send a report to” DOPL which will includes the name of the deceased, the drug and the doctor who prescribed the substance. But, the bill makes clear that this law cannot provide a “new cause of action” against any doctor.

Next, the bill rolls back some of the restricted access requirements enacted last year. Now, DOPL can share de-identified information from the database with an officer without a warrant if the officer is involved in a joint investigation with DOPL, or has a case referred to them from DOPL.

Last, the bill allows any “probation or parole officer employed by the Department of Corrections” to get access to the database without a warrant if “necessary for the officer’s supervision of a specific probationer or parolee.”

ENACTS: 26-4-10.5

AMENDS: 58-37f-301 and 58-37f-702

EFFECTIVE DATE: October 31, 2016. Spooky.

CONTROLLED SUBSTANCE PRESCRIPTION NOTIFICATION

HB 150

Rep. Brad Daw

✕ Next in our line of prescription abuse bills. Only semi-criminal.

This bill attempts to address the overdose death pandemic with a new twist. It amends to the access to DOPL database statute to allow a third person (think, the concerned mother of a son addicted to pain pills) to be designated by the son to receive a notification each time he is prescribed a controlled substance. DOPL would then notify the mother only of the fact that a controlled substance was prescribed (but cannot reveal which controlled substance) and the date of the prescription. So, this is another think-outside-the-box bill meant to attack the overdose drug problem without increasing any penalties or requiring any more drug treatment.

AMENDS: 58-37f-301

COUNTY PERSONNEL REQUIREMENTS

HB 154

Rep. Brad Dee

Allows the Career Service Council to refer an appeal to an administrative law judge if the Council determines that the referral is in the parties’ best interest. The bill clarifies that the administrative law judge shall make findings of fact and a recommendation to the Career Service Council on referred appeals. Also requires the Career Service Council to refer an appeal to an administrative law judge for a final decision without further Council review if the county employee or county personnel director requests that the appeal be referred.

AMENDS: 17-33-4 and 17-33-4.5

REPORTING OF CHILD PORNOGRAPHY

HB 155

Rep. Craig Hall

This bill:

- Requires that a computer technician who finds child pornography in the course of the technician's work shall report the finding to law enforcement or the federal Cyber Tip Line for child pornography;
- Provides that an employer may establish a procedure for the computer technician employee to report to a designated employee who will report the child pornography;
- Provides that the willful failure to report the child pornography is a class B misdemeanor;
- Provides that the identity of the technician making the report shall be confidential, except as necessary for the criminal investigation and judicial process;
- Provides immunity for a computer technician who reports in good faith or acting in good faith does not make a report (Good faith is presumed from previous reporting);
- Provides a defense to prosecution if the computer technician did not report the image because the technician reasonably believed the person in the image was not under the age of 18; and
- Specifies that Internet service providers, including hosting services, are not liable under this section if the provider reports child pornography in compliance with specified federal law.

ENACTS: 76-10-1204.5

LINE-OF-DUTY DEATH BENEFITS AMENDMENTS

HB 159

Rep. Mike McKell

This bill does two things. First, it eliminates the disqualification of a surviving spouse from receiving health coverage based on remarriage. Instead, the surviving spouse remains eligible for health coverage until they become eligible for Medicare. It also leaves coverage available to a surviving child until the age of 26.

Second, with regard to the Local Public Safety and Firefighter Surviving Spouse Trust Fund, coverage is only available to those who elect to participate in the trust fund before July 1, 2017, AND are current on their cost-sharing agreement payments. If an employer does not elect to participate before July 1, 2017, it can do so at a later time during an annual open enrollment period.

PRACTICE POINTER:

This bill requires no action by local governments other than to disseminate the additional criteria to the appropriate staff.

AMENDS: 53-17-201 and 53-17-301

RETROSPECTIVE OPERATION:

The amendments to Section 53-17-201 in this bill have retrospective operation to July 1, 2005, and create eligibility for benefits beginning on the effective date of this bill.

JUSTICE COURT AMENDMENTS

[HB 160](#)

Rep. Craig Hall

Justice court judges in counties of the first and second class must have a law degree. In counties of the third, fourth, fifth and sixth class, however, they are only required to have a high school diploma. In the event there are not at least three applicants that meet the requirements in a first and second class county, the position is to be re-advertised and applications may be accepted from those unable to meet the requirements. In order to best facilitate hiring within the requirements, the AOC is to provide notice to all attorneys in the county and adjacent counties. Any judge already holding office as of May 10, 2016, who does not fit the requirement is grandfathered in and may remain on the bench.

PRACTICE POINTER:

This bill requires no action by local governments other than to disseminate the additional criteria to the appropriate staff.

AMENDS: 78A-7-201 and 78A-7-203

GARNISHMENT AMENDMENTS

[HB 165](#)

Rep. Brad Dee

Child victims of crime involving felony sex offenses may now receive restitution through garnishment of disability and veterans benefits. Previously these categories of income were not available under an exception. A court order is required from the convicting court, specifically ordering restitution to the victim.

This bill requires attorneys to obtain a restitution order in order to proceed in seeking restitution; something hopefully we are already doing!

AMENDS: 78B-5-505

CONSENSUAL SEXUAL ACTIVITY OF A MINOR

[HB 179](#)

Rep. Merrill Nelson

To begin this bill amends Section 76-5-401, the statute dealing with unlawful sexual acts with a victim 14-16 years old. Current law provides that while the crime is normally a 3rd degree felony, if the defendant establishes he or she is 4 years or less older than the victim it becomes a Class B misdemeanor. That remains the case. The only change here is that now there is a helpful cross-reference to the sex-offender statute clarifying that the Class B offense is not a registerable offense – which it wasn't. (= no change).

Next the bill amends Section 76-5-401.1, the statute dealing with unlawful sexual abuse of a 14-16 year old (the fondling type acts). The main change is; *“A person commits sexual abuse of*

a minor if the person is [seven] four years or more older than the victim or the defendant is an adult who holds a position of special trust,” such as a teacher. The standards penalty here would be a Class A misdemeanor. The result is that a H.S. senior, 18 years and five days old, who hooks up with a freshman 14, years and 1 day old, would be guilty of a Class A misdemeanor, where, before this law, there would have been no crime.

But, under new Subsection (3)(a) the bill clarifies that for a first offender who is less than 21 years of age who commits the Class A violation, it is not a registerable offense.

Finally, the bill maintains much of the language for a third degree felony for a person who is 18 years of age or older, held a position of special trust (such as a teacher) and the victim was enrolled as a student at the time of the offense. In the end, this statute ends up a little bit squirrely.

AMENDS: 76-5-401, 76-5-401.1 and 77-41-102

COUNTY OPTION SALES AND USE TAX FOR HIGHWAYS

HB 183

Rep. Jack Draxler

HB 183 provides for an alternative distribution of the optional sales and use tax for highways for a political subdivision where no public transit district exists.

AMENDS: 51-2a-202, 59-12-2219 and 63I-1-259

MOTOR VEHICLE IMPOUND AMENDMENTS

HB 189

Rep. Stephen Handy

This bill addresses the situation where a person receives a vehicle from a dealer, the dealer issues a temporary permit and the person is then arrested for DUI. If that vehicle is impounded the person may walk away from it leaving the dealer to pay the impound fee and/or towing and storage fees.

The bill amends the sentencing requirements for DUI in 41-6a-505. It requires the sentencing court to order the person to pay the administrative impound fee (interestingly up to this time there was no requirement that the person be ordered to pay an impound fee). If the fee has been paid by a dealer who has issued a temporary permit the court shall order the defendant to reimburse the dealer. Similarly if the towing and storage fees were paid by a dealer having issued a temporary permit the court shall order the person to reimburse the dealer.

Reports to the Motor Vehicle Division of impounds or towing of DUI involved vehicles now must include a temporary permit number if there is one. The Motor Vehicle Division is now required to give notice to the dealer who issued the temporary permit that the vehicle has been impounded or towed.

AMENDS: 41-6a-505, 41-6a-1406 and 72-9-603

INTERLOCK RESTRICTED DRIVER AMENDMENTS

HB 191

Rep. Edward Redd

This bill amends the affirmative defense available for driving without an interlock device installed on a vehicle and makes procedural changes for how the Driver License Division records requirements for interlock restricted drivers.

Prior to passage of this bill, an affirmative defense to driving without an interlock has been available under 41-6a-518.2 if

- an interlock restricted driver was driving an employer's vehicle in the course of the driver's employment,
- had given written notice that the driver was interlock restricted, and
- the driver carried proof on their person that the written notification was given.

The affirmative defense has not been available if the driver uses the vehicle for personal use or if the vehicle is owned by a business either all or partly owned by the driver.

This amendment requires:

- that employers give written verification for the driver to carry in the vehicle;
- that the employer is aware of the driver's status as interlock restricted;
- that the vehicle will only be used in course of the business and not for personal use;
- that the business is not owned entirely or partially by the driver;
- that the employer's insurance is aware of the driver being interlock restricted, and;
- that the driver is added to the employer's insurance policy.

AMENDS: 41-6a-518, 41-6a-518.2 and 53-3-1007

OPIATE OVERDOSE RESPONSE ACT – PILOT PROGRAM AND OTHER AMENDMENTS

HB 192

Rep. Mike McKell

⌘ Next in our line of prescription abuse bills. Only semi-criminal.

This is a long bill that can be summarized easily. It names our newly funded "Opiate Response Overdose Act" – with funding of \$250,000 –, creates an opiate overdose outreach program within the Department and Health, specifies how the money is used, and coordinates with a few other bills. Still trying to attack the overdose death problem.

AMENDS: 26-55-101, 26-55-102, 26-55-104, 58-17b-507, 58-31b-703, 58-67-702, 58-68-702, 58-70a-505 and 63J-1-602.1

ENACTS: 26-55-105

UTAH CODE SECTIONS AFFECTED BY COORDINATION CLAUSE:

26-55-104, 26-55-105, 26-55-106, 58-17b-507, 58-31b-703, 58-67-702, 58-68-702 and 58-70a-505

UTAH COMMUNICATIONS AUTHORITY ACT AMENDMENTS

SB 193

Sen. Wayne Harper

This bill amends portions of the Utah Communications Authority Act, the act that governs provision of 911 and other emergency communications throughout the State. The bill clarifies what a public safety answering point (PSAP—essentially the 911 dispatch centers throughout the state) is. The bill also provides that a PSAP must have certain equipment and trained staff to receive communication.

The bill appears to address concerns over how the State’s monthly 911 charge to telecom customers for statewide integration of 911 and other emergency communications is spent by the Utah Communications Authority (“UCA”) Board and its divisions (911, Radio Network, and Interoperability Divisions). The bill requires the UCA to create a comprehensive strategic plan to coordinate its actions and its divisions’ actions. UCA must update this plan every year.

The bill addresses the performance audit and study of the statewide 911 emergency response system that was begun July 1, 2015. It adds requirements of the study/audit to look at whether physical consolidation of PSAPs is warranted, whether minimum operational, technical, financial, geographic and personnel training standards for PSAPs should be established and how the number of devices of first responders can be reduced via better use of available communications spectrum.

The bill extends the completion date for this audit from July 1, 2016, to September 30, 2016. The bill extends the freeze on use of the statewide 911 fee for new local PSAPs, call taking, or dispatching entities/projects from the conclusion of the audit to a new date – June 30, 2017.

Under the bill, when a subscriber is not required to pay any of the 911 charges, telecoms shall collect those charges from those that are responsible for paying the charges. The bill also clarifies that VOIP are subject to these charges (specifically the Computer Aided Dispatch Restricted Account charge).

The bill requires that counties, cities or towns receiving their local 911 charges (from the Tax Commission, to whom telecoms pay the charge), shall remit the money directly to a PSAP. This is the part of the bill that has direct application to municipalities and counties. The remaining provisions of the bill primarily relate to the State (Utah Communications Authority).

AMENDS: 63H-7a-103, 63H-7a-204, 63H-7a-206, 63H-7a-302, 63H-7a-402, 63H-7a-502, 69-2-2, 69-2-5, 69-2-5.5, 69-2-5.6 and 69-2-5.7

UNLAWFUL DETAINER REVISIONS

HB 196

Rep. Keith Grover

This bill amends the definition of “peaceable possession” to explicitly exclude possession of premises by a trespasser, i.e., one who occupies real property but never had any possessory rights to the premises, or continuing to occupy real property after being served with an order of restitution issued by a court of competent jurisdiction. It further clarifies that a plaintiff to any forcible entry

or forcible detainer action must show only that she was in actual peaceable possession at the time of the forcible entry (or was entitled to the possession at the time of the forcible detainer). Lastly, it states that an action for unlawful detainer may be brought in the form of a counterclaim.

AMENDS: 78B-6-801 and 78B-6-809

BALLOT PROPOSITION AMENDMENTS

HB 198

Rep. Justin Fawson

This bill cleans up statutory language regarding ballot propositions by eliminating some contradictions found in the Election Code and Title 59. It adds the definition of “eligible voter.” An eligible voter is a legal voter who resides in the jurisdiction of a county, city or town that is holding an election on a ballot proposition. The bill requires eligible voters wishing to submit an argument for or against a ballot proposition to file a request with the election officer at least 65 days before the election. Arguments must be submitted to the election officer no later than 60 days before election day. The argument may not exceed 500 words, may not list more than five names as sponsors and must contain the eligible voter’s name, residential address, postal address, email address (if available) and phone number.

The bill requires election officers that receive arguments in favor of and against a ballot proposition to send, via mail or email, within one day, a copy of the arguments to eligible voters taking the opposite position. Rebuttal arguments are allowed up until 45 days before the election.

AMENDS: 20A7-101, 20A-7-402, 59-1-1604 and 59-1-1605

HUMAN TRAFFICKING SAFE HARBOR AMENDMENTS

HB 206

Rep. Angela Romero

This bill changes the way children are handled by the Division of Child and Family Services when those children have been involved in prostitution or sexual solicitation. The bill requires the Division to treat the child and not have the child subject to delinquency proceedings. The bill also adds to the definition of abuse in the Juvenile Court Act to include human trafficking of a child for sexual exploitation.

AMENDS: 76-10-1302 and 78A-6-105

TAX ISSUES AMENDMENT

HB 208

Rep. Steve Eliason

HB 208 ensures that income tax credits are paid through the general fund rather than through income taxes.

AMENDS: 59-2-1208, 59-2-1209, 59-7-605, 59-7-614.1, 59-7-618, 59-10-1005, 59-10-1033, 59-10-1105 and 59-13-202.

EFFECTIVE DATE: July 1, 2016

RESOURCE MANAGEMENT PLANNING

HB 219

Rep. Keven Stratton

Last year, the legislature enacted a bill requiring each county to prepare a resource management plan. This bill clarifies that the resource management plan is for the public lands within the county and must address twenty-eight separate resources, including air. The time frame for adopting the resource management plan has been extended: planning commission recommendations are now due by (before) May 1, 2017, and a county's legislative body shall adopt a resource management plan by (before) August 1, 2017. This bill deleted the requirement from last year's bill to coordinate with proximate counties regarding common interests and clarified some funding mechanisms to help pay for the development of the resource management plan.

After obtaining each county's resource management plan, the Public Lands Policy Coordinating Office is to create a statewide resource management plan and submit it to the Commission for the Stewardship of Public Lands for review. This Commission will prepare a concurrent resolution approving the statewide resource management plan to be considered during the 2018 General Session.

AMENDS: 17-27a-401, 17-27a-403, 17-27a-404 and 63J-4-607

NONUSE APPLICATION AMENDMENTS

HB 222

Rep. Timothy Hawkes

Generally, public entities can be protected from losing water rights due to nonuse by filing a nonuse application. These provisions clarify that nonuse applications or successive overlapping nonuse applications do not protect a water right that is already subject to forfeiture. Nor does the approval of one or more nonuse applications constitute beneficial use of water for the purpose of preserving a water right from forfeiture under a judicial action to declare the water right forfeited, under the fifteen year time period during which a challenge to a water right forfeiture may be commenced.

PRACTICE POINTER:

Attorneys for counties and cities need to bone up on their water law.

AMENDS: 73-1-4

LOCAL HISTORIC DISTRICT

HB 223

Rep. Brad Wilson

This bill establishes the process by which a municipality may create a local historic district. If municipalities allow residents to initiate the creation of a local historic district, the municipality will be required to follow this bill's detailed procedures before the historic district can be established.

AMENDS: 10-9a-503

ELECTRONIC DRIVER LICENSE AMENDMENTS

HB 227

Rep. Craig Hall

This bill requires that the Department of Public Safety and the Department of Technology Services complete a study on the feasibility, costs, advantages and disadvantages in creating an electronic driver license program in the state. The bill requires that DPS and DTS provide a report with their findings and a recommendation to the Transportation Interim Committee before September 1, 2016.

ENACTS: No codified section was enacted. Bill automatically repeals on November 30, 2016.

SCENIC BYWAY AMENDMENTS

HB 232

Rep. Michael Noel

This provision has limited application. It allows for a non-scenic segment of state scenic byway to be declared such by either the legislative body of a county, city or town after reviewing the segment, or by the Scenic Byway Committee after receiving a request from the owner of real property that is a non-scenic area adjacent to a state scenic byway. This largely came about as a result of the Utah Department of Transportation's need to be able to, from time to time, relocate off-road signs or billboards at off-ramps in certain areas of the state. The bill gives limited rights to a property owner owning a declared non-scenic segment of state road the opportunity to be able to move these signs when necessary, with the approval of local government or the committee. This provision DOES NOT pre-empt local governments right to, through its land use regulations, designate where billboards or off-premise signs would be located.

AMENDS: 72-4-303

OPIATE OVERDOSE RESPONSE ACT – OVERDOSE OUTREACH PROVIDERS AND OTHER AMENDMENTS

HB 238

Rep. Carol Spackman Moss

R Next in our line of prescription abuse bills. Only semi-criminal.

While this bill is long, it can also be reduced down to its main point. Within the “Opiate Response Overdose Act” it expands the definitions of who is an opiate overdoses outreach provider, and also expands – without unprofessional conduct, or criminal or civil liability – those persons authorized to dispense an “opiate antagonist” to a person at risk for an overdose. This can even include a family member. This is typically Naloxone – a very effective antidote to a person at risk of dying by overdose.

ENACTS: 26-55-105 and 58-69-702

AMENDS: 26-55-101, 26-55-102, 26-55-103, 26-55-104, 58-17B-309, 58-17B-507, 58-31B-703, 58-67-702, 58-67-702 and 58-70a-505

ACCESS TO OPIOID PRESCRIPTION INFORMATION VIA PRACTITIONER DATA MANAGEMENT SYSTEMS

HB 240

Rep. Steve Eliason

✕ Next in our line of prescription abuse bills. Only semi-criminal.

While this bill is long, it can also be reduced down to its main point, which is really the same as HB 238, with slight changes that will come together by coordinating clauses. Within the “Opiate Response Overdose Act” it expands the definitions of who is an opiate overdoses outreach provider, and also expands – without unprofessional conduct, or criminal or civil liability – those persons authorized to dispense an “opiate antagonist” to a person at risk for an overdose. This can even include a family member and, with this bill, can include a standing order for the Naloxone.

ENACTS: 26-55-105

AMENDS: 26-55-101, 26-55-102, 26-55-103, 26-55-104, 58-17B-507, 58-31B-703, 58-67-702, 58-68-702 and 58-70a-505

LOCAL HEALTH DEPARTMENT AMENDMENTS

HB 245

Rep. Brad Dee

This bill provides counties with the option to create a united local health department, combining the local health department with the local substance abuse authority and the local mental health authority. The bill also permits two or more contiguous counties to join together in an interlocal agreement to form a multicounty united health department. Any municipalities within counties comprising a multicounty united local health department will be served by the multicounty united local health department.

AMENDS: 17-43-201, 17-43-204, 17-43-301, 17-43-305, 26A-1-102, 26A-1-105, 26A-1-109, 26A-1-110, 26A-1-111, 26A-1-118, 26A-1-119 and 62A-15-103

MUNICIPAL DISCONNECTION AMENDMENTS

HB 248

Rep. Melvin Brown

This bill grants the mayor of municipalities the authority to file a request for disconnection. This helps municipalities by broadening who can request a disconnection. The bill also allocates costs, should litigation arise: each party pays for their own witnesses and the petitioner pays for all other court costs.

AMENDS: 10-2-501, 10-2-502.5, 10-2-502.7 and 10-2-509

POST-EMPLOYMENT RESTRICTIONS AMENDMENTS

HB 251

Rep. Mike Schultz

- Limits non-competition covenants entered into on or after May 10, 2016, to 1 year or less from the date upon which the employee's employment with the company ends.
- Voids any post employment restrictive covenant made after May 10, 2016, which has a duration of greater than 1 year.
- Exempts nonsolicitation, nondisclosure and confidentiality agreements.
- Exempts reasonable severance agreements, subject to common law, mutually and freely agreed upon in good faith at or after the time of termination that include a post-employment restrictive covenant; and
- Post-employment restrictive covenants related to or arising out of the sale of a business, if the individual subject to the restrictive covenant receives value related to the sale of the business.
- If an employer attempts to enforce an unenforceable covenant not to compete, the employer is liable for the employee's arbitration and court costs, attorney fees and actual damages.

ENACTS: 34-51-101, 34-51-102, 34-51-201, 34-51-202 and 34-51-301

INTELLECTUAL DISABILITY TERMINOLOGY AMENDMENTS

HB 252

Rep. Paul Ray

Several years ago this sponsor ran a bill changing the term "Mental Retardation" and its variations to "Intellectual Disability." At that time we as prosecutors requested that he not change the terminology in state statutes dealing with the insanity or diminished mental capacity defenses or sections dealing with persons not subjected to the death penalty. The reason for that of course was that there was a considerable body of case law using the old terminology and we did not want to unnecessarily complicate litigation in those areas.

In 2014, in the case of *Hall v. Florida*, the Supreme Court specifically stated that the term "mental retardation" is replaced with the term "intellectual disability" and carries exactly the same meaning. Given the reduction of any risk of litigation over the simple term change we contacted Representative Ray and suggested that we would support changing that terminology in those areas.

This bill resulted.

AMENDS: 76-2-305, 77-15-5, 77-15a-101, 77-15a-102 and 77-15a-103

CONDOMINIUM OWNERSHIP AND COMMUNITY OWNERSHIP AMENDMENT

HB 255

Rep. Mike Schultz

HB 255 provides that a condominium “unit is created by the recording of the declaration and condominium plat that describes the unit.” The Bill further provides that an unconstructed unit is a unit for purposes of the Condominium Act. This Bill reverses case law that suggested an unconstructed unit is not a unit under the Act even though it was identified on a recorded plat. The case law had left uncertain the roles of the recorder and assessor in the context of an unconstructed unit and this Bill clarifies the law.

AMENDS: 57-8-3, 57-8-16.5, 57-8-24 and 57-8A-502

EFFECTIVE DATE: March 23, 2016, upon being signed by the governor.

SUBSTANCE ABUSE TREATMENT FRAUD

HB 259

Rep. Eric Hutchings

Get ready for the “not in my neighborhood” folks to come out of the woodwork.

This bill amends the definition of "recovery residence" to mean a home, residence or facility that meets at least two of the following:

- Provides supervised living environment for individuals recovering from substance abused disorder;
- Provides a living environment in which more than half of the individuals in residence are recovering from a substance abuse disorder;
- Provides or arranges for residents to receive services related to their recovery;
- Is held out as a living environment in which recovering individuals live together to encourage continued sobriety; or
- (a) Receives public funding; or
(b) Is run as a business venture, either for-profit or not-for-profit.

The bill defines what “recovery residence” does not mean. It also amends provisions related to violations, penalties, and liability of human services programs. It creates a laundry list of requirements for the Office of Licensing and Department of Human Services.

AMENDS: 62A-2-101; 62A-2-106; 62A-2-108; 62A-2-112; 62A-2-113; 62A-2-116 and 62A-15-103

SEXUAL EXPLOITATION OF A MINOR AMENDMENTS

[HB 260](#)

Rep. Francis D. Gibson

This bill clarifies what most of us always assumed – that a law enforcement officer, attorney, court employee or juror required to view child pornography during the course of their employment or service, and acting within the scope of that employment or service, is not guilty of a crime.

AMENDS: 76-5B-201

FRAUD AMENDMENTS

[HB 263](#)

Rep. Craig Hall

This bill makes a small change to 76-6-501, Forgery and producing false identification, to include Possession of a Stolen or Forged Identification Document with the Intent to Transfer as a new, separate element of the crime.

AMENDS: 76-6-501

RECYCLING OF COPPER WIRE

[HB 269](#)

Rep. Fred Cox

This bill is only semi-criminal in nature.

It amends 76-6-1407 and 1408, which deal with the requirements of a metal recycling dealer, so that each violation will have a mandatory fine: Class C = \$750; Class B = \$1,000; Class A = \$2,500. Otherwise, the level of penalties remains the same.

AMENDS: 76-6-1407 and 76-6-1408

UTAH PUBLIC LAND MANAGEMENT ACT

[HB 276](#)

Rep. Michael E. Noel

This Bill enacts the Utah Public Land Management Act. The act applies to public lands acquired by state from the federal government pursuant to Section 63L-6-103, except lands designated as a protected wilderness area or lands managed by SITLA. **The Act becomes effective only upon the date that the state receives title to at least 100,000 acres of public land from the federal government pursuant to Section [63L-6-103](#).**

The Act provides:

- definitions;
- the principal or major use of the public lands acquired;
- the declaration of policy;

- interdepartmental cooperation;
- land use planning of these acquired public lands;
- honors pre-existing claims and rights;
- administration of the Act;
- the management of use, occupancy and development of public land;
- enforcement of provisions of the Act and/or rules issued under the Act;
- the establishment of fees, charges, and commissions;
- for creation of the Public Land Protection Fund;
- for creation of the Public Land Management Fund;
- for creation of the Timber Fund;
- for creation of the Grazing Land Fund;
- for annual reports; for grazing fees, permits, and leases for domestic livestock on public lands;
- for rights-of-way for roads or facilities over public lands acquired by the state;
- grants, issue, or renewal of land use authorization public lands; for construction and maintenance of new roads with public lands;
- for maintenance of facilities;
- for designation of right-of-way corridor;
- for other requirements for each land use authorization granted, issued or renewed;
- for the terms and conditions of each land use authorization; and
- for the suspension or termination of a land use authorization and the grounds and procedures applied.

This Bill also creates the Division of Land Management within the Department of Natural Resources, creates the Public Land Management Advisory Board and provides for the duties of the Division of Land Management.

AMENDS: 40-6-16 and 79-2-201

ENACTS: 63L-8-101, 63L-8-102, 63L-8-103, 63L-8-104, 63L-8-105, 63L-8-201, 63L-8-202, 63L-8-203, 63L-8-301, 63L-8-302, 63L-8-303, 63L-8-304, 63L-8-305, 63L-8-306, 63L-8-307, 63L-8-308, 63L-8-309, 63L-8-310, 63L-8-311, 63L-8-312, 63L-8-401, 63L-8-402, 63L-8-403, 63L-8-501, 63L-8-502, 63L-8-503, 63L-8-504, 63L-8-505, 63L-8-506, 63L-8-507, 63L-8-508, 63L-8-509, 63L-8-510, 63L-8-511, 63L-8-601, 63L-8-602, 79-6-101, 79-6-102, 79-6-103, 79-6-104 and 79-6-105

STATUTE OF LIMITATIONS REFORM AMENDMENTS

HB 279

Rep. Ken Ivory

The statute of limitations for civil actions in child sexual abuse cases, as of July 1, 2016, will be 35 years after the victim of the abuse turns 18 years old.

AMENDS: 78b-2-308

CAMPAIGN FINANCE REFORM AMENDMENTS

HB 290

Rep. Robert Spendlove

This bill removes provisions that allowed a candidate or officeholder to report the aggregate value of all individual contributions the candidate or officeholder received that are worth \$50 or less.

AMENDS: 10-3-208, 17-16-6.5, 20A-11-203, 20A-11-204, 20A-11-302, 20A-11-303, 20A-11-401, 20A-11-1302 and 20A-11-1303

BODY-WORN CAMERAS FOR LAW ENFORCEMENT

HB 300

Rep. Daniel McKay

This bill provides that a law enforcement agency (“LEA”) which uses body-worn cameras; e.g., body-worn cameras worn by law enforcement officers (“LEO”), shall have written policies governing the use of body-worn cameras that meet or exceed the minimum guidelines provided. The minimum guidelines include that the written policy comply with the requirements of the statute (discussed below) and address the security, storage, and maintenance of data collected from body-worn cameras.

The bill also provides minimum guidelines for the activation or use of body-worn cameras, including but not limited to documenting the presence of a body-worn camera in any report or other official record of any law enforcement encounter where a body-worn camera was present, and not deactivating a body-worn camera until a LEO’s direct participation in the law enforcement encounter is complete. An exception to the “no deactivation” rule provides that the camera may be turned off while consulting with a supervisor or another officer during a significant period of inactivity, during a conversation with a sensitive victim of crime, a witness of crime, or a conversation with an individual who wishes to report or discuss criminal activity (assuming that the individual who is the subject of the recording requests that the officer deactivate the camera and the officer believes the value of the information outweighs the value of the potential recording and records the request by the individual to deactivate the camera).

The bill also explicitly prohibits certain uses of body-worn cameras by LEOs, including:

- any personal use of a body-worn camera;
- making a personal copy of a recording created while on duty or acting in an official capacity as a LEO;
- retaining a recording of any activity or information obtained while on duty or acting in an official capacity as a LEO;
- duplicating or distributing a recording except as authorized by the employing LEA; and
- altering or deleting a recording in violation of the statute.

The bill also revises GRAMA to provide that audio and video recordings created by a body-worn camera that records sound or images inside a home or residence are “private” under GRAMA, unless:

- (I) it depicts the commission of an alleged crime;
- (ii) it records any encounter between a LEO and a person that results in death or bodily injury

- or includes an instance when an officer fires a weapon;
- (iii) it records any encounter that is the subject of a complaint or legal proceeding against a LEO or LEA;
- (iv) it contains an officer-involved critical incident; or
- (v) it has been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.

The bill further amends GRAMA to state that, in determining whether a record is properly classified as private, the governmental entity, the state records committee, the local appeals board, or court shall consider and weigh (I) any personal privacy interests, including those in images, that would be affected by disclosure of the records in question, and (ii) any public interest served by disclosure.

AMENDS: 63G-2-201 and 63-2-302

ENACTS: 77-7a-101, 77-7a-102, 77-7a-103, 77-7a-104, 77-7a-105, 77-7a-106 and 77-7a-107

WATER RIGHTS AND RESOURCES AMENDMENTS

HB 305

Rep. Joel Briscoe

In light of the Flint, Michigan, water contamination fiasco, this bill requires a certified operator of a public water supplier to verify by signature and certification number, or by a professional engineer performing the duties of the certified water operator, to verify by signature and stamp the accuracy of the data on water use and supply submitted by the public water supplier to the Drinking Water Board. For those entities that have their own water systems, this won't be much of a change but will require a certified operator or a professional engineer to verify the accuracy of data sent to the Drinking Water Board.

AMENDS: 19-4-104, 73-5-8, 73-10-18, 73-10-19 and 73-10-20

WHITE COLLAR CRIME REGISTRY AMENDMENTS

HB 311

Rep. Mike McKell

This bill provides that a conviction for A Pattern of Unlawful Activity can be added to the Registry when it involves one of the other seven predicate offences. The legislation also allows the use of driver license photos when no other photos can be found.

AMENDS: 77-42-102, 77-42-103, 77-42-104 and 77-42-105

ENACTS: 53-3-221.7

BUILDING CODE REVIEW AND ADOPTION AMENDMENTS

HB 316

Rep. Brad Wilson

This is the bill that adopts the International Building Codes for the State of Utah. It:

- Officially adopts the 2015 version of the International Codes with some amendments;
- It extends the cycle for the adoption of building codes from a three year cycle to a six year cycle;
- It requires some type of cost benefit analysis in the future for any changes in code provisions, including any future updates;
- It prohibits individual local government additions to the Code without receiving the approval of the Code Commission;
 - Emergency threats to health and safety may be approved and activated immediately but those provisions that do not meet that criteria would have to be approved during the next Code renewal cycle;
 - Existing Code provisions outside of the approved Codes that we already have in our local ordinances may remain, provided they are found to be necessary to address a condition within our jurisdictions that may cause injury or death of individuals if the situation is not remedied.

The Building Code, however, does not preempt local zoning and land use standards.

PRACTICE POINTER:

This bill will require that we review all of our codes for provisions that may be outside of the 2015 adopted Code and evaluate whether those provisions address health and safety concerns (which provision may be kept) or other concerns such as aesthetics, etc. (which must be deleted).

AMENDS: 15A-1-204, 15A-1-403, 15A-2-102, 15A-2-103, 15A-2-104, 15A-3-102, 15A-3-103, 15A-3-104, 15A-3-105, 15A-3-106, 15A-3-107, 15A-3-108, 15A-3-110, 15A-3-112, 15A-3-113, 15A-3-202, 15A-3-203, 15A-3-204, 15A-3-205, 15A-3-206, 15A-3-302, 15A-3-303, 15A-3-304, 15A-3-305, 15A-3-306, 15A-3-308, 15A-3-310, 15A-3-311, 15A-3-313, 15A-3-314, 15A-3-401, 15A-3-501, 15A-3-601, 15A-3-701, 15A-3-801, 15A-4-103, 15A-4-107, 15A-4-203 and 58-11a-502

ENACTS: 15A-3-315, 15A-3-901, 15A-6-101, 15A-6-102, 15A-6-201 and 15A-6-202

REPEALS: 15A-3-106.5

EFFECTIVE DATE: July 1, 2016

POINT OF THE MOUNTAIN DEVELOPMENT COMMISSION ACT

HB 318

Rep. Brad Wilson

This bill creates the Point of the Mountain Development Commission to make recommendations about how to develop the “area surrounding the border between Salt Lake County and Utah County, commonly referred to as the Point of the Mountain.” The commission consists of fifteen members, including two state senators appointed by the president of the Senate; two state representatives appointed by the speaker of the House; the mayors of Lehi, Draper, and Salt Lake County or their designees; two mayors of communities in or close to the project area appointed by the League of Cities and Towns; an appointee by the Economic Development Corporation of Utah; a member of the Board and an employee of the Governor’s Office of Economic Development each

appointed by the Governor; and two members of the public, one representing the school boards and one representing the information technology sector, each jointly appointed by the Senate president and the House speaker.

The purpose of the Commission is to evaluate, study, prepare one or more reports and make recommendations concerning the future planning and development of the project area. The three key areas of focus will be: (1) studying and developing strategies to engage the public and collaborate with stakeholders; (2) studying and making recommendations regarding transportation and infrastructure needs; and (3) studying and making recommendations regarding financing economic development of, and the infrastructure investment in, the area. The Commission must report its interim findings to several interim committees and the governor by December 1, 2016. The Commission's recommendations are advisory only, and the bill does not limit or otherwise affect the land use authority of any municipality or county with respect to private development in the project area.

AMENDS: 63I-1-263

ENACTS: 63C-17-101, 63C-17-102, 63C-17-103, 63C-17-104, 63C-17-105, 63C-17-106 and 63C-17-107

METRO TOWNSHIP REVISIONS

HB 320

Rep. LaVar Christensen

This bill changes how council members are selected in small metro townships. For a metro township with a population of less than 10,000, the five council members are now elected at-large instead of from designated council districts. Metro townships with a population of 10,000 or more still need to designate council districts from which their five council members shall be elected. This bill took effect on March 10, 2016, when it was signed by Governor Herbert. Candidates who had already filed a declaration of candidacy in small metro township voting districts automatically became at-large candidates on the effective date of the bill.

AMENDS: 10-2a-410, 10-2a-411, 10-3-205.5 and 63I-2-210

EFFECTIVE DATE: March 10, 2016, upon being signed by the governor.

HOUSING AND HOMELESS AMENDMENTS

HB 328

Rep. Rebecca Chavez-Houck

This bill requires the Homeless Coordinating Committee—the Committee that oversees the Pamela Atkinson Homeless Account—to conduct a needs assessment that:

- (I) identifies desired statewide outcomes related to minimizing homelessness;
- (ii) reviews technology used for data gathering by state, county and local governments and private organizations for reporting information about, and providing services to, homeless individuals in the state;
- (iii) evaluates the technical capacity of existing databases and information technology systems

- used to gather and report data related to homelessness and identifies improvements needed to better serve the homeless population and meet the needs of all stakeholders;
- (iv) identifies gaps between the data currently collected and the data needed to implement best practices in minimizing homelessness and achieve the outcomes identified;
 - (v) identifies opportunities to align data gathering and reporting related to homelessness with state efforts to reduce intergenerational poverty, incarceration, and recidivism rates; and
 - (vi) makes recommendations regarding the needed improvements related to the foregoing and outlines steps for implementing the recommendations.

The bill requires the Homeless Coordinating Committee to complete the needs assessment and report its findings to the Department of Workforce Services before October 1, 2016, for inclusion in the Department's annual report.

AMENDS: 35A-8-602

STATE FIRE CODE AMENDMENTS

HB 330

Rep. Mike Schultz

This legislation incorporates the 2015 edition of the International Fire Code, as amended. Addresses solar photovoltaic systems, automatic sprinklers, carbon monoxide detectors, fire alarms and a bunch of other stuff your marshals will already know by heart before you get home from this training.

AMENDS: 15A-5-103, 15A-5-202, 15A-5-202.5, 15A-5-203, 15A-5-204, 15A-5-205, 15A-5-205.5, 15A-5-206, 15A-5-207, 15A-5-302 and 53-7-225

ENACTS: 15A-5-304

EFFECTIVE DATE: July 1, 2016

INTERLOCAL COOPERATION ACT

HB 341

Rep. Merrill Nelson

This bill amends the Interlocal Cooperation Act and enacts new provisions relating to taxed interlocal entities. The bill authorizes a taxed interlocal entity to establish one or more segments which are treated as separate interlocal entities, enjoying separate rights, powers, privileges, and duties. A segment is governed by the organization agreement of the segment's associated entity. Each segment is treated as a separate interlocal entity and may contract, hold property and grant liens and security interests in its own name. It may also sue and be sued.

A segment may have a separate purpose from the associated entity. Each segment must contain the name of the segment's associated entity and it must be distinguishable from the name of any other segment established by the associated entity. The bill provides for a limitation on the debts, liabilities, and obligations incurred by any individual segment.

The bill provides that, unless otherwise provided by the segment's organizing resolution, a segment's associated entity is the sole member of the agreement. A segment's organizing resolution may provide, however, that the segment's membership includes a public agency other than the segment's associated entity only if the organizing resolution provides:

- (a) the relative rights, powers, and duties of the segment's members;
- (b) whether the members exercise the members' rights and powers and discharge of members' duties in one or more classes or groups;
- (c) the method by which a member's membership in the segment is terminated;
- (d) the effect of the members' termination; and
- (e) the effect of the termination of the last member's membership in the agreement.

Under the amendment, a director or an officer of a taxed interlocal entity or a segment is not subject to liability for any action or failure to act, unless: (a) the director breaches a fiduciary duty; and (b) the breach constitutes gross negligence, willful misconduct, or intentional infliction of harm.

With regard to termination, the termination of a segment does not affect the segment's or the segment's associated entity's limitation on liabilities. A segment is terminated when the segment's associated entity is terminated.

AMENDS: 11-13-103, 11-13-202.5, 11-13-301, 11-13-304, 11-13-401, 11-13-502 and 63A-3-401

ENACTS: 11-13-601-608

RENUMBERS

& AMENDS: 11-13-603

MOVE OVER AMENDMENTS

HB 344

Rep. Steve Eliason

This bill allows for a driver traveling in the HOV lane to move out of the lane by crossing a double white line when approaching an emergency vehicle or tow truck displaying their emergency flashing lights if it is practical and safe to do so. The bill makes technical changes to the language for reinstating a driver license under this section.

AMENDS: 41-6a-904

LOCAL AND SPECIAL SERVICE DISTRICT AMENDMENTS

HB 347

Rep. Stephen Handy

With respect to 17B-1-312 (Training of board members), the bill clarifies that each member of a board of trustees of a local district shall, within one year of being elected or appointed to a new term, complete the statutorily required training.

With respect to 17B-1-643 (Imposing or increasing a fee for service provided by local district), the bill provides that, in addition to either publishing or mailing the notice of hearing, the

notice of hearing may alternatively be posted in compliance with the notice provisions of the section.

With respect to 17B-2a-803 (Provisions applicable to public transit districts), the bill provides that the provisions of Subsection 53-3-202(3)(b) do not apply to a motor vehicle owned in whole or in part by a public transit district.

With respect to 17B-2a-821 (Multicounty district may establish and enforce parking ordinance), the bill removes a provision that prohibits a person from riding a transit vehicle without paying the applicable fare.

With respect to 19-6-508 (Resource recovery project operated by an improvement district), the bill:

- (1) defines the term “resource recovery project”;
- (2) authorizes an improvement district created to operate a sewage system to own, acquire, construct, or operate a resource recovery project;
- (3) establishes the powers of an improvement district that owns, acquires, constructs, or operates a resource recovery project; and
- (4) establishes the required provisions of an agreement between an improvement district and a private person or a public agency for the ownership, acquisition, construction, management, or operation of a resource recovery project.

AMENDS: 17B-1-312, 17B-2a-403, 17B-1-643, 17B-2a-803 and 17B-2a-821

ENACTS: 19-6-508

MOUNTAINOUS PLANNING DISTRICT AMENDMENTS

HB 348

Rep. Brad Dee

The legislature allowed the mountainous planning district experiment to extend for one more year. Instead of sun setting on June 1, 2016, the statutes that enacted the mountainous planning district last year will survive until Jun 1, 2017.

In addition, the bill requires an ordinance that establishes a mountainous planning district to designate up to four seats on the mountainous planning district planning commission that will be selected by a new procedure. The procedure requires the county to identify up to four cities that are adjacent to the mountainous planning district or that exercise extra-territorial jurisdiction in accordance with Section 10-8-15. Whenever a vacancy occurs in a designated planning commission seat, the county must send a written request to one of the designated cities, on a rotating basis, asking the city to provide a list of three individuals from which the county may select one individual to fill the vacant position. The bill also allows an area to be withdrawn from the mountainous planning district if it is annexed into a city pursuant to statute and the county determines that the area contains less than 100 acres, does not contain forest service or watershed land, and is not used by individuals for recreational purposes.

AMENDS: 17-27a-301, 17-27a-901 and 63I-2-217

PEACE OFFICER SITUATIONAL TRAINING

HB 355

Rep. Francis Gibson

This bill authorizes the attorney general to establish a training center and provide resources regarding law enforcement use of force and provides that the attorney general will make the program available statewide for training on the use of force by law enforcement officers.

AMENDS: 67-5-34

POLITICAL SUBDIVISION ETHICS COMMISSION AMENDMENTS

HB 359

Rep. Jack Draxler

Instead of filing an ethics complaint with the Lieutenant Governor's office, that office will put on its website the person with whom the complaint is to be filed.

AMENDS: 11-49-501

ELECTRONIC DEVICE LOCATION DATA AMENDMENTS

HB 369

Rep. John Knotwell

This bill allows a government entity to collect anonymous electronic data. It prohibits the use of the collected data in a judicial proceeding unless obtained by a warrant.

AMENDS: 77-23c-102

PRESCRIPTION DRUG ABUSE AMENDMENTS

HB 375

Sen. LaVar Christensen

R Next in our line of prescription abuse bills. This one is a bit more fun to read.

Under 58-37f-303:

- (2) To address the serious public health concern of life-altering and life-threatening opioid abuse and overdose, and to achieve the purposes of this chapter and as described in Section 58-37f-201, which includes identifying and reducing the prescribing and dispensing of opioids in an unprofessional or unlawful manner or in quantities or frequencies inconsistent with generally recognized standards of dosage for an opioid, through utilization of the carefully developed and highly respected database:
 - (a) a prescriber or dispenser of an opioid for individual outpatient usage shall access and review the database as necessary in the prescriber's or dispenser's professional judgment and to achieve the purpose of this chapter as described in Section 58-37f-201; . . .

- (4) If the dispenser's access and review of the database suggest that the individual seeking an opioid may be obtaining opioids in quantities or frequencies inconsistent with generally recognized standards as provided in this section and Section 58-37f-201, the dispenser shall reasonably attempt to contact the prescriber to obtain the prescriber's informed, current, and professional decision regarding whether the prescribed opioid is medically justified, notwithstanding the results of the database search.

BUT

- (2) Notwithstanding any other provision of law, any action or lack of action by a prescriber or dispenser to meet the requirements of Section 58-37f-303 may not be used by the division in any action against the prescriber or dispenser.
- (3) Nothing in Section 58-37f-303 establishes a minimum standard of care for prescribers and dispensers.

Oh well. Good intentions – no teeth.

AMENDS: 58-37F-701

ENACTS: 58-37f-303

UTAH COMMUNICATIONS AUTHORITY AMENDMENTS

HB 380

Rep. Brad Dee

This bill primarily relates to the Utah Communications Authority (UCA) and not to counties or municipalities. It amends the method of appointing the chair of the UCA (Governor appoints rather than the board electing) and requires the governor to rotate appointment of the chair every two years between a local government representative and a state representative.

The bill:

- Requires that UCA establish a comprehensive strategic plan and obtains input from UCA's internal divisions for the plan;
- Requires UCA to report yearly to the Legislative Management Committee, and the Executive Offices and Criminal Justice Appropriations Subcommittee;
- Requires UCA to report to the Legislative Executive Appropriations Committee before issuing bonds;
- Subjects UCA to the Utah Procurement Code and the Utah Public Officers' and Employees' Ethics Act; and
- Requires UCA to establish HR guidelines substantially similar to those that apply to state government (UCA is a quasi-governmental entity).

AMENDS: 63H-7a-203, 63H-7a-204, 63H-7a-205, 63H-7a-206, 63H-7a-302, 63H-7a-307, 63H-7a-402, 63H-7a-403, 63H-7a-405, 63H-7a-502, 63H-7a-504, 63H-7a-701 and 63H-7a-803

STANDARDS FOR ISSUANCE OF A SUMMONS

[HB 381](#)

Rep. LaVar Christensen

As finally negotiated, this bill is essentially a recognition that issuance of warrants is governed by the Rules of Criminal Procedure as well as this section. It establishes a preference for a summons and allows issuance an arrest warrant in lieu of the summons only upon a finding of probable cause to believe the person committed the public offense and that the warrant is necessary to prevent injury to a person or property, secure the appearance of the accused or protect public safety and welfare of the community or an individual.

As a practical matter, probable cause statements exist for that purpose and courts already make a similar finding. This modification does not require any additional hearings or documentation in addition to the current practice as far as we know.

AMENDS: 77-7-5

LAW ENFORCEMENT REVISIONS

[HB 391](#)

Rep. Michael Noel

This legislation creates authorization for the chief executive officer of a political subdivision or a county sheriff to determine that Bureau of Land Management's failure to enter into an agreement provided for in 53-13-106.9 (Interagency agreement granting limited authority) violates the political subdivision's rights under 43 U.S.C. Sec 1733(c)(1). It further establishes the criteria that can be considered in this determination. Essentially, this bill provides the teeth for enforcing 53-13-106.9.

ENACTS: 53-13-106.11 and 53-13-106.12

CRIME VICTIM RESTITUTION AMENDMENTS

[HB 404](#)

Rep. Brad Wilson

This bill expands both the definition of what can be ordered as restitution and the time for submitting requests for restitution in criminal cases. This new legislation resulted from the State vs. Brown decision, which held that a victim could not recover travel and other expenses for participating in the criminal case.

The court may now order payment for all demonstrable economic injuries, and is no longer limited to that which a person could recover in a civil action. The court may now award all travel and other expenses "reasonably incurred" as a result of participation in the criminal proceedings.

For defendants placed on probation, a request by the prosecution must still be submitted within one year of sentencing, but the time period for determination of restitution is now the entire period of time the Defendant is under the court's jurisdiction. For defendants committed to prison, the requirements have not changed.

AMENDS: 77-27-5, 77-26-6, 77-38-3, 77-38a-102 and 77-38a-302

JUVENILE SENTENCING AMENDMENTS

[HB 405](#)

Rep. Lowry Snow

Given the direction of the US Supreme Court, this bill was essentially inevitable. It prohibits the sentencing of an individual under 18 years of age to life in prison without parole.

To put the progression into perspective, consider the following:

- In 2005 the court found capital punishment for juveniles to be unconstitutional;
- Thereafter they found that life without parole for non-murders was also unconstitutional (5 to 4 ruling);
- In June of 2012 the court prohibited mandatory life without parole for juveniles in the *Miller v. Alabama* case;
- Most recently, in January of 2016, in *Montgomery v. Louisiana*, the court found *Miller* to be retroactive.

In *Montgomery* the late Justice Scalia, in his dissenting opinion, stated the majority had made state legislators “an offer they can’t refuse”. He said that the only way to avoid a litigation mess is by permitting juvenile offenders an opportunity to argue for parole. This was especially true of this Utah Legislature, which is still curiously on a trend of reducing punishment.

This bill is intended to be prospective only, although it will be interesting to see how well that concept holds up. There are only 2 cases of those who committed homicides before age 18 and were sentenced to life without parole. Both are particularly grisly stabbing cases.

76-3-203.6, which contains enhanced penalties for crimes committed by prisoners, now has a prohibition on life without parole for the prisoners who are younger than 18 years of age at the time the offense was committed. As that section deals with non homicide cases, it was obviously an oversight that it was not changed 10 years ago along with other sections. 73-6-206 - Capitol felony penalties - now provides that if the person was younger than 18 years of age at the time the offense was committed and was sentenced on or after May 10, 2016, (the effective date of this bill), life without parole does not apply.

Similar changes are made in parallel sections.

A new section 76-3-209, Limitation on sentencing for juveniles, re-states the proposition, apparently in case there is some other section which has been missed allowing life without parole for juvenile offenders.

AMENDS: 76-3-203.6, 76-3-206, 76-3-207, 76-3-207.5 and 76-3-207.7

ENACTS: 76-3-209

LOCAL GOVERNMENT BONDING AMENDMENTS

[HB 428](#)

Rep. Douglas Sagers

This Bill will allow any local political subdivision to issue negotiable bonds for the purpose

of paying all or part of the cost of the portion of any claim, settlement, or judgment that exceeds \$3,000,000.00. This new provision expires on June 30, 2021. The maturity date to issue negotiable bonds for this purpose may not exceed 21 years.

It also allows a political subdivision to levy an annual property tax sufficient to pay the portion of any claim, settlement, or judgment that exceeds \$3,000,000.00, including interest payments and issuance costs for bonds. This levy may not exceed .001 dollar of taxable value of taxable property.

Political subdivisions that levy an annual property tax to pay the portion of any claim, settlement, or judgment that exceeds \$3,000,000.00 must comply with notice and public hearing requirements of Section 59-2-219 and may levy the annual property tax until the bonds maturity date expires.

AMENDS: 11-14-103, 63G-7-702 and 63G-7-704

AFFORDABLE HOUSING REVISIONS

[HB 431](#)

Rep. Rebecca Edwards

Public Transit Districts must include provisions for affordable housing in transit-oriented developments and transit-supportive development projects.

AMENDS: 17B-2a-802 and 17B-2a-804

HOUSING AND HOMELESS REFORM INITIATIVE

[HB 436](#)

Rep. Francis Gibson

The bill creates a restricted account called the Homeless to Housing Reform Restricted Account from which the Homeless Coordinating Committee may award ongoing or one-time grants or contracts for activities that are aimed at alleviating homelessness. The bill sets forth the responsibilities of the Homeless Coordinating Committee with respect to the Restricted Account and appropriates over \$9 million to the Restricted Account from the State General Fund and from Federal Funds.

The bill also adds the Mayor of Salt Lake City and the Mayor of Salt Lake County as members of the Homeless Coordinating Committee.

AMENDS: 35A-8-601 and 63I-2-235
ENACTS: 35A-8-604 and 35A-8-605

RETIREMENT AMENDMENTS FOR FELONY CONVICTION

HB 439

Rep. Daniel McCay

This bill informs employees participating in the Utah state retirement plan what happens to their state retirement benefits when they are convicted of an employment related felony offense. As you can imagine, “employment related” means during the performance of the employee’s duties, within the scope of employment or under color of the employee’s authority.

The legislation provides that a plea in abeyance, regardless of whether the charge is later reduced or dismissed, qualifies as a conviction.

Convicted employees shall forfeit accrual of service credit and employer retirement related contributions, including employer contributions to the employer sponsored defined contribution plans or other retirement related benefits. The convicted employee does not forfeit the employee’s contributions to such plans.

The bill defines when forfeiture begins and ends, the appeals process, reporting requirements for employers and what steps the state retirement office must take.

ENACTS: 49-11-1201

SCHOOL RESOURCE OFFICERS AND SCHOOL ADMINISTRATORS TRAINING AND AGREEMENT

HB 460

Rep. Sandra Hollins

This legislation enacts a statute focused on school resource officers. Specifically, it provides definitions of the entities involved, mandates the State Board of Education to create a training program for school resource officers and school principals to attend, and outlines who is to be involved in creating the curriculum as well as key points that may be included in the curriculum. It also creates the statutory basis for contracting with a school resource officer and outlines requirements within the contract that shall be included. (Cautionary note: At first glance, don’t confuse LEA with Law Enforcement Agency; rather it is referencing the local education agency.)

ENACTS: 53A-11-1601, 53A-11-1602, 53A-11-1603 and 53A-11-1604

JAIL CONTRACTING RATE AMENDMENTS

HB 479

Rep. Michael Noel

This Bill increases the contract rate for jail beds in county jails which house state inmates and which provide treatment services for inmates. The rate increases from 84% to 86% of the average state daily incarceration rate.

AMENDS: 64-13e-103

CONCURRENT RESOLUTION ON WATERS OF THE UNITED STATES

HCR 1

Rep. Michael Noel

The resolution authorizes the Attorney General to challenge a rule under the Clean Water Act that seems to broadly sweep drainages, dry washes, gullies, coulees and arroyos that simply move water after rain, into the category of “waters of the United States.” There is no immediate effect upon the state and local government until the outcome of such a case is determined. No particular section of the State Code is amended.

SENATE BILLS

CANCELLATION OF AUTO INSURANCE COVERAGE

SB 11

Sen. Wayne Harper

This bill enacts legislation creating a time line for when insurance companies must discontinue automatic payments if a policy is cancelled. The insurance company may not reinstate the policy without express consent of the insured. The bill also imposes a fine up to \$2500 for any insurer that violates this provision.

ENACTS: 31A-22-322

PHASED RETIREMENT

SB 19

Sen. Todd Weiler

This bill modifies the Utah State Retirement and Insurance Benefit Act by enacting phased retirement provisions. It allows a participating employer to participate in phased retirement for a retiree who has not completed the one-year employment separation requirement. The bill requires a participating employer that offers phased retirement to establish written policies and to enter into a written agreement with the retiree. The bill provides for retiree eligibility for phased retirement and establishes restrictions. It also establishes reporting requirements for both participating employer and retiree and provides penalties for violations of those reporting requirements.

AMENDS: 49-11-505

ENACTS: 49-11-1201, 49-11-1202, 49-11-1203, 49-11-1204, 49-11-1205, 49-11-1206, 49-11-1207, 49-11-1208 and 63I-1-249

EFFECTIVE DATE: January 1, 2017

RETIREMENT SYSTEMS AUDIT RECOMMENDATIONS

SB 20

Sen. Todd Weiler

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending provisions relating to public information. The bill requires the Utah State Retirement Systems (URS) to provide employee compensation information on its website. It requires URS to provide advance public notice of administrative board meetings on the Utah Public Notice Website. Under this bill, URS is also required to establish policies for time limits to respond to information requests.

AMENDS: 49-11-1101

ENACTS: 49-11-1102 and 49-11-1103

WATER LAW - PROTECTED PURCHASER AMENDMENTS

SB 23

Sen. Margaret Dayton

Changes the definition of “protected purchaser” of a certificated or uncertificated security, or interest in water. It now provides that the person who paid for the share, or their predecessor in interest, must have paid any assessment levied against the share of stock for at least four of the immediate past seven years and used the water either directly or indirectly for at least four of the past seven years. The previous language allowed for a protected purchaser to establish the fact by paying the levy against the surety only once for the past five year period immediately preceding the date in which the status of protected purchaser was established.

PRACTICE POINTER:

Be sure to check to see that on either certificated or uncertificated securities or interests in a water share, it has been used as prescribed by the new provisions of this statute in order to be able to claim protected purchaser status.

AMENDS: 70A-8-303

BALLOT AMENDMENTS

SB 25

Sen. Margaret Dayton

This bill amends the definition of “ticket” to mean “a list of:

- (a) political parties;
- (b) candidates for an office; or
- (c) ballot propositions.”

The bill also amends various provisions relating to ballot format and content, including, but not limited to, the following:

- (1) for paper ballots, the election officer shall ensure that such ballots include a space for a write-in candidate immediately following the last candidate listed on that ticket;
- (2) for machine counted ballots for a race in which a voter is authorized to cast a write-in vote and a write-in candidate is qualified, the election officer shall include a space on the ticket for a write-in candidate immediately following the last candidate listed on that ticket; and
- (3) requiring that each ticket that appears on a ballot for an election shall appear separately and in a specific order.

Finally, the bill makes other technical changes to the provisions of the Election Code relating to ballots.

AMENDS: 20A-1-102, 20A-6-101, 20A-6-102, 20A-6-301, 20A-6-303, 20A-6-304, 20A-6-305 and 20A-9-406

ELECTION NOTICE AMENDMENTS

SB 26

Sen. Margaret Dayton

- This bill provides an election officer with the option to give notice, before each election, of:
- the date and place of election;
 - the hours during which the polls will be open;
 - the polling places for each voting precinct;
 - an election day voting center designated under Section 20A-3-703, and
 - the qualifications for persons to vote in the election in one of two ways:
 - (1) by giving printed notice of all of the information identified directly above; or
 - (2) by giving printed notice of a website where all of the information identified above can be obtained.

The bill also provides an election officer with the following two options to provide the required printed notice:

- (1) publish the notice at least two days before election day in a newspaper of general circulation common to the area to which the election pertain and as required in Section 1-1-101 (which set forth the legal notice publication requirements); or
- (2) mail the notice to each registered voter who resides in the area to which the election pertains at least five days before election day.

AMENDS: 20A-5-101

ABSENTEE BALLOT AMENDMENTS

SB 27

Sen. Margaret Dayton

This bill changes the date by which an election officer is required to mail official absentee ballots from 28 to no later than 21 days before election day.

AMENDS: 20A-3-306

WATER SYSTEM CONSERVATION PRICING

SB 28

Sen. Scott K. Jenkins

Requires that any retail water provider, as defined in 73-10-32, establish an increasing rate structure by water usage and include in the billing the customers annual water usage. Any governmental or private entity involved in retailing water are now going to have to make sure that in every year there is an increase in their water usage, there is an increase in the price, even by a penny. In addition, they will have to make sure they come up with some method of determining water usage for a customer, and then place that on the annual billing.

ENACTS: 73-10-32.5

RETIREMENT SYSTEMS AMENDMENTS

SB 29

Sen. Todd Weiler

This bill modifies the Utah State Retirement and Insurance Benefit Act.

- It clarifies retiree reporting provisions to the Utah State Retirement Office on the status of the reemployment.
- Under this bill, URS is allowed to make payments to a deceased member's beneficiaries 30 days instead of three months after the date of death.
- The bill amends the definition of "final average salary" to specify that
 - its basis is the contract year for educational institutions,
 - the state fiscal year for judges, and
 - the calendar year for all other participating employers.

The bill clarifies that a public safety employee who is transferred or promoted to an administration position within the same department primarily to manage or supervise public safety service employees will continue to earn public safety service.

The bill also provides that for an elected official under Tier II retirement, the total amount contributed by the participating employer, and the total amount contributed by the elected official, vest immediately.

AMENDS: 49-11-505, 49-11-609, 49-12-102, 49-13-102, 49-14-102, 49-14-201, 49-15-102, 49-15-201, 49-16-102, 49-17-102, 49-18-102, 49-21-403, 49-22-102, 49-22-201, 49-22-205, 49-22-303, 49-22-401, 49-23-102, 49-23-302, 49-23-401 and 67-19-14.4

SEWER LATERAL DISCLOSURE

SB 34

Sen. Karen Mayne

This bill mandates that counties and municipalities provide their respective residents an annual disclosure that describes who is responsible for maintaining sewer laterals. Once each calendar year, public entities are required to conspicuously post this information (e.g., website, social media campaign) or distribute this information annually (e.g., sewer bill, newsletter). Failure to comply with this disclosure requirement does not result in any liability for the public owner.

ENACTS: 11-8-4

APPOINTMENT OF COUNTY ASSESSORS

SB 41

Sen. Ann Millner

County Assessors elected to their office after 1993 in counties of the fourth through sixth class, are required to be state-licensed or state-certified appraisers no later than 36 months after their term of office begins. County Assessors elected to their office after January 1, 2010, for counties of the first, second or third class, must be state-licensed or state-certified before filing a declaration

of candidacy. If any of these offices become vacant because no qualified individual filed or no individual became qualified and a qualified individual could not be found, this bill authorizes a county legislative body to contract with a state-licensed or state-certified appraiser from outside the county.

REPEALS AND REENACTS: 17-17-2

PUBLIC NOTICE OF COURT RECORDING

SB 42

Sen. Karen Mayne

This requires the judicial council to require notice be given to the public when a recording system is being used in a court proceeding. Look for a new sign on the courthouse door.

AMENDS: 78A-2-208

CONSTRUCTION CODE AMENDMENTS

SB 44

Sen. Margaret Dayton

This provision exempts structures of fifteen hundred (1,500) square foot or less from the provisions of the State Construction Codes, provided the sales occurring in such structures are described in 59-12-104(20), Agricultural products. Your codes and enforcements should now reflect the minimum square footage exempt from the building permit requirements.

AMENDS: 15A-1-204

STATUTE OF LIMITATIONS ON ENVIRONMENTAL CODE

SB 49

Sen. Luz Escamilla

This bill provides that an action may be brought within two years upon a statute in Title 19, Environmental Quality Code, for a forfeiture or penalty to the state if the violation occurs on or after May 10, 2016.

AMENDS: 78B-2-302.

ENACTS: 78B-2-307.5.

ANTIDISCRIMINATION AND WORKPLACE ACCOMMODATIONS REVISIONS

SB 59

Sen. Todd Weiler

This bill addresses the workplace needs of pregnant women and women with children. Under the bill an employer may not deny employment, require termination, or otherwise refuse to provide

reasonable accommodations for an employee related to pregnancy, childbirth, breast feeding, or related conditions, provided the request is made, and the accommodation does not create an undue hardship on the operations of the employer. As but one example, public employers with public employees not working in an office building may, as an alternative to refrigeration, provide a nonelectric insulated container for storage of pumped breast milk. Undue hardship relates to the entity's size, financial resources, and the nature and structure of operations. Except for more frequent restroom, food or water breaks, the employer may require certification from the employee's health care provider on the medical advisability of the reasonable accommodation. Written notice of these rights to reasonable accommodation must be posted or included in the employee's handbook. The employer is not, however, required to permit an employee to have the employee's children at the workplace to accommodate pregnancy, childbirth, breast feeding or related conditions.

AMENDS: 34-49-202, 34A-5-102 and 34A-5-106

SURVEY MONUMENT REPLACEMENT

SB 63

Sen. Ralph Okerlund

In a small victory for the surveyors, a bill was passed to help protect survey monuments and corners. This bill requires anyone who is going to disturb any established corner for any reason to notify the county surveyor at least five business days beforehand that the corner may be disturbed. Additionally, anyone who finds a monument that needs to be rehabilitated must notify the county surveyor within five business days of discovering the monument. Finally, the bill extended the time when the Monument Replacement and Restoration Committee must disburse any remaining funds appropriated by the Legislature that have not been expended by the Committee to counties that have established a dedicated monument preservation fund until December 31, 2017.

AMENDS: 17-23-14 and 63F-1-510

PROPERTY TAX AMENDMENTS

SB 68

Sen. Wayne Harper

This bill exempts from property tax machinery and equipment with an economic life of three or more years that is leased to a governmental entity. The claimant must file an annual application for the exemption and provide a copy of the lease and other evidence showing eligibility and anything else required by the Utah State Tax Commission or applicable county. The bill requires the claimant to submit an amended application if the relevant lease term changes.

ENACTS: 59-2-1116.

EFFECTIVE DATE: The bill is contingent upon passage by the voters of the constitutional amendment explained in SJR 3, below. If the constitutional amendment is approved, this bill will take effect on January 1, 2017.

PROPERTY TAX AMENDMENTS

SJR 3

Sen. Wayne Harper

This resolution proposes amending the Utah Constitution to allow the legislature to exempt tangible personal property leased to the State or a political subdivision of the State. SB 68 is a companion statutory bill enacting the exemption.

AMENDS: ARTICLE XIII, SECTION 3

EFFECTIVE DATE: If approved by a majority of voters, the constitutional amendment will take effect January 1, 2017.

SCHOOL AND INSTITUTIONAL TRUST LANDS MANAGEMENT ACT AMENDMENTS

SB 72

Sen. Margaret Dayton

This bill amends the circumstances in which the director of the School and Institutional Trust Lands Administration may withdraw land from leasing, disposition, or use, including upon a finding that continued use or occupancy would interfere with the activities of the administration or the administration's authorized lessees or permittee, or would cause a threat to public safety. The bill clarifies that mineral lease applications may be submitted and processed online, and directs that the School and Institutional Trust Lands Administration and School and Institutional Trust Fund Office shall enter into a memorandum of understanding regarding the sources of money received.

AMENDS: 53C-2-105, 53C-2-301, 53C-2-407 and 53C-3-102

WATER RIGHTS ADJUDICATION AMENDMENTS

SB 75

Sen. Margaret Dayton

This bill provides a process and guideline for the state engineer's involvement in any suit involving water rights. The court may order the state engineer to carry on an investigation as provided in Title 74, Chapter 4. Anyone seeking an adjudication of water rights should review this section to become aware of the state engineer's role and involvement in the adjudication process.

AMENDS: 73-4-1, 73-4-3, 73-4-4, 73-4-5, 73-4-9, 73-4-10, 73-4-11, 73-4-12, 73-4-14, 73-4-15, 73-4-16, 73-4-21, 73-4-22 and 73-4-24

ENACTS: 73-4-9.5

REPEALS: 73-4-6, 73-4-7 and 73-4-8

INFRASTRUCTURE FUNDING AMENDMENTS

SB 80

Sen. Stuart Adams

This bill modifies state sales and use tax earmarks. It requires the State's Division of Finance to transfer revenue from the Transportation Fund to the Transportation Investment Fund. The Transportation Investment Fund is used to build and maintain state and federal highways.

AMENDS: 59-12-103, 59-12-1201, 63N-2-512, 72-2-106, 72-2-107 and 72-2-124

EFFECTIVE DATE: July 1, 2016

SCHOOL BUILDING COORDINATION

SB 86

Sen. Alvin Jackson

This bill requires a school district or charter school to notify the local governmental entity, the Department of Transportation, and utility providers prior to acquiring or constructing a school. The bill also requires the school district or charter school to submit a child access routing plan to the Department of Transportation. This bill should help local government's efforts to plan for and accommodate the schools in their area.

AMENDS: 53A-20-108

TRANSPARENCY FOR POLITICAL SUBDIVISIONS

SB 99

Sen. Deidre Hendersen

This bill requires a local district or a special service district to post the name, phone number, and email address of each member of the district's board of trustees on the Utah Public Notice Website. If a member of the governing board changes his or her phone number or email address, or if the membership of the board changes, the district must update the information on the Utah Public Notice Website within 30 days after the change is made. The bill also removes a size and budget threshold for local government participation in the Utah Public Finance Website.

AMENDS: 17B-1-303, 17D-1-106, 63A-3-401, 63A-3-403, 63A-3-405 and 63F-1-701

HIGH COST INFRASTRUCTURE TAX CREDIT

SB 102

Sen. Ralph Okerlund

Last year, the legislature passed a bill intending to incentivize businesses to locate or expand in Utah by offering a tax credit for various high cost infrastructure projects. This year, SB 102 tinkers with that legislation by enabling the Office of Energy Development to establish administrative rules. The bill also amends the nine members of the Utah Energy Infrastructure Board and requires the Board to meet at least once a month unless there are no project applications to

consider.

AMENDS: 63H-2-202
ENACTS: 63M-4-606

EFFECTIVE DATE: Except as provided in Subsection (2) below, this bill took effect on March 28, 2016, upon being signed by the governor.
(2) The actions affecting Sections 59-7-619 and 59-10-1034 take effect for a taxable year beginning on or after January 1, 2017.

BAIL BOND AMENDMENTS

SB 105

Sen. Lyle Hillyard

Most of this bill's revisions deal with such terms as "bail bond" and "surety agency" and have little to no effect on the way bonds are used in the criminal justice system. It has much more to do with bond companies and their licensing and regulation. Of note, however, if a judge increases the amount of the bail, the original premium may be used to pay the increased premium. The bill allows for the exoneration of the bail upon sentencing if the judge allows more than seven days for the defendant to appear at the required jail or prison.

AMENDS: 31A-35-102, 31A-35-103, 31A-35-104, 31A-35-201, 31A-35-202, 31A-35-301, 31A-35-401, 31A-35-401.5, 31A-35-402, 31A-35-404, 31A-35-405, 31A-35-406, 31A-35-407, 31A-35-501, 31A-35-502, 31A-35-503, 31A-35-504, 31A-35-601, 31A-35-602, 31A-35-603, 31A-35-604, 31A-35-605, 31A-35-606, 31A-35-607, 31A-35-608, 31A-35-701, 31A-35-702, 31A-35-703, 31A-35-704, 77-18a-1, 77-20-1, 77-20-3, 77-20-4, 77-20-7, 77-20-8.5, 77-20-9, 77-20-10, 77-20b-101, 77-20b-102, 77-20b-103, 77-20b-104, 77-20b-105
ENACTS: 77-20b-100
REPEALS: 77-20-5

ASSAULT OFFENSE AMENDMENTS

SB 106

Sen. Brian Shiozawa

This bill amends Section 76-5-102.7 – Assault against health care provider and medical services provider – so that while simple assault of such persons remain a class A misdemeanor:

- (2) A person who violates Subsection (1) is guilty of a third degree felony if the person:
- (a) causes substantial bodily injury, as defined in Section 76-1-601; and
 - (b) acts intentionally or knowingly.

AMENDS: 76-5-102.7

WATER QUALITY AMENDMENTS

SB 110

Sen. David Hinkins

This bill is intended to provide a process for independent peer review of proposals made by the Division of Water Quality, setting forth requirements and selection criteria for a panel of independent experts. The bill was drafted primarily in response to recent nutrient requirements that are imposing and potentially impose significant costs in the form of mandates on local governments. While the Division of Water Quality is charged with enforcing federal mandates, by coming up with the rules and standards, this provision allows for an independent peer review to challenge the science behind the Division of Water Quality requirements. Any local government adversely affected by the mandate of the recent nutrient requirements, may look at the possibility of independently challenging the science behind the determination of their particular facilities.

ENACTS: 19-5-105.3

PROPERTY TAX ASSESSMENT AMOUNT AMENDMENTS

SB 112

Rep. Howard Stephenson

SB 112 provides that the assessing authority carries the burden of proof before a board of equalization, the Tax Commission, or a court if the assessing authority seeks a higher value than the assessed value. This could reverse prior Commission precedent, which held a revision or amendment to an assessment based upon incorrect or incomplete information reported by the taxpayer retained the common law presumption of correctness.

PRACTICE POINTER:

If an assessor revises or amends an assessment because of incomplete or erroneous information reported by the taxpayer, the assessor might consider labeling the revised assessment as an “escaped property” assessment under Utah Code 59-2-102(11)(ii), (iii). An escaped property assessment should retain the presumption of correctness and the taxpayer should carry the burden of proof notwithstanding SB 112. For example, assume that the taxpayer failed to report several items of personal property and the assessor learns of the underreporting at a hearing before the Commission. Assuming the assessor intends to increase the assessment at the hearing, the assessor should reference the increase as an escaped property assessment so that the presumption of correctness applies and the burden of proof lies with the taxpayer. However, a stipulation will be required to have the escaped property assessment heard with the original assessment.

ENACTS: 59-2-109

EFFECTIVE DATE: This bill has retrospective operation to January 1, 2016.

MUNICIPAL UTILITIES AMENDMENTS

SB 114

Sen. Jerry Stevenson

This bill clarifies and affirms that the deployment of fiber infrastructure facilities, termed “public telecommunications service facilities,” are indeed public utilities. Fiber is as critical as water, sewer, gas, electric and other types of traditional public facilities. The bill also allows for an opinion question to be placed on the ballot in any municipal general or special election seeking an answer to the question of how these facilities ought to be funded, financed and built within the municipality. The opinion question portion of this bill, however, is restricted to those who are providing public telecommunications service facilities prior to the effective date of the bill.

AMENDS: 10-8-14, 10-18-102, 10-18-105 and 10-18-204

EFFECTIVE DATE: July 1, 2016

PROPERTY TAX NOTICE AMENDMENTS

SB 120

Sen. Howard Stephenson

When proposing a property tax increase, Utah Code §59-2-919 requires a taxing entity to advertise the proposed tax increase to the public. As part of the notice, the public advertisement must state the percentage increase of the proposed budget over “last year’s property tax budgeted revenue, excluding new growth.” This bill clarifies that “last year’s property tax budgeted revenue” does not include revenue received from a debt service levy that has been voted on by the public.

AMENDS: 59-2-910

EFFECTIVE DATE: This bill has retrospective operation to January 1, 2016.

ELECTRIC ASSISTED BICYCLES AMENDMENTS

SB 121

Sen. Todd Weiler

This bill modified the definition of an electric assisted bicycle and made certain uses of electric assisted bicycles infractions. The bill does not heavily regulate the use of electric assisted bicycles, but it does expressly allow for local government to enact more stringent restrictions.

AMENDS: 41-6a-102, 41-6a-1505, 53-3-202 and 79-5-102

ENACTS: 41-6a-1115.5

WILDLAND FIRE POLICY UPDATES

SB 122

Sen. Evan Vickers

This bill modifies the rules and procedures regarding the prevention and management of

wildland fires. The bill creates duties for counties and municipalities regarding the prevention and management of wildland fires. The bill also provides a method for entities to contract with the Division of Forestry, Fire, and State Lands for the reimbursement of costs associated with the management of wildland fires in some instances.

PRACTICE POINTER:

Local government officials should familiarize themselves with their duties under this statute. Local governments should also enter into an agreement with the Division of Forestry, Fire, and State Lands because reimbursements for costs related to wildland fire management are not available without a valid contract.

AMENDS: 11-7-1, 15A-5-203, 65A-1-1, 65A-3-3, 65A-8-101, 65A-8-103, 65A-8-201, 65A-8-202, 65A-8-203, 65A-8-204, 65A-8-206, 65A-8-207, 65A-8-209, 65A-8-210 and 65A-8-211

ENACTS: 65A-8-202.5, 65A-8-203.1, 65A-8-203.2 and 65A-8-209.1

REPEALS: 65A-8-103.5 and 65A-8-205

EFFECTIVE DATE: (1) Except as provided in Subsection (2), this bill takes effect on January 1, 2017.

(2) The appropriation in Section 21 of this bill takes effect on July 1, 2016.

GANG ENHANCEMENT PROVISIONS

SB 124

Sen. Daniel Thatcher

Simple. This bill adds to the in-concert enhancement section 76-3-203.1:

(n) retaliation against a witness, victim, informant, or other violation of Section 76-8-508.3;

AMENDS: 76-3-203.1

DRIVING PRIVILEGE CARD AMENDMENTS

SB 129

Sen. Curtis Bramble

This bill amends certain requirements for obtaining a driving privilege card. A signed waiver is no longer required for registering fingerprints in the FBI's Next Generation Identification system's Rap Back Service. It also amends the notification requirements regarding criminal history and warrants between the state and federal jurisdictions.

AMENDS: 53-3-205.5

COMMERCIAL DRIVER LICENSE AMENDMENTS

SB 132

Sen. Kevin Van Tassell

This bill amends various provisions relating to commercial driver licenses, including the disclosure of driving records, the status of temporary licenses, the term of a commercial driving instruction permit, required application information and medical certificate requirements.

AMENDS: 53-3-109, 53-3-205, 53-3-408, 53-3-410 and 53-3-410.1

ADMINISTRATIVE LAW JUDGE AMENDMENTS

SB 135

Sen. Wayne Harper

This bill modifies the procurement process for a procurement unit seeking to obtain administrative law judge services. Many of the changes only affect the hiring of administrative law judges by state agencies, particularly the changes in the bill to Chapter 67 State Officers and Employees. However, if a municipality or county has adopted applicable portions of the Utah Procurement Code pursuant to Section 63G-6a-105(4), then they should be aware of these changes. The bill inserts definitions for the terms “administrative law judge” and “administrative law judge services” into the Utah Procurement Code. Procurement units subject to the Utah Procurement Code must use a standard procurement process to procure administrative law judge services. The bill specifies who must participate on the evaluation committee and identifies written notice that must be given to the Department of Human Resource Management by the evaluation committee within 30 days after a contract is awarded for administrative law judge services. This bill was clearly intended for state agencies, but by modifying the Utah Procurement Code, there is the potential to affect those governmental entities that have adopted applicable portions of the Utah Procurement Code by ordinance.

AMENDS: 63G-6a-103, 63G-6a-403, 63G-6a-408, 63G-6a-707, 67-19e-102, 67-19e-103, 67-19e-104, 67-19e-106 and 67-19e-108,

ENACTS: 63G-6a-409, 67-19e-104.5 and 67-19e-110

COUNTY OPTION FUNDING FOR BOTANICAL, CULTURAL, RECREATIONAL, AND ZOOLOGICAL ORGANIZATIONS AND FACILITIES

SB 137

Sen. Brian Shiozawa

This bill amends how revenues collected by a county of the first class from the ZAP tax are distributed by a county of the first class. Specifically, the bill increases the percentage of ZAP funds allocated to zoological organizations from 12 1/8% to 16% and simultaneously decreases the percentage allocated to Tier I zoological organizations from 48 7/8% to 45%. The bill also clarifies that a county legislative body may revise county ordinances to reflect statutory changes to the ZAP distribution formula or eligible recipients of ZAP funds without having to submit an opinion

question to residents of the county.

AMENDS: 59-12-702, 59-12-703 and 59-12-704

EFFECTIVE DATE: January 1, 2017

IMPROVEMENT DISTRICT

SB 142

Sen. Todd Weiler

This bill amends §17B-2a-403 and enacts §19-6-508. It allows improvement districts that were created to operate a sewage system to own, acquire, construct, or operate a resource recovery project independently. Alternatively, a qualifying improvement district may enter into an agreement for the ownership, acquisition, construction, management, or operation of a resource recovery project with a public agency or a private person.

These agreements must contain certain provisions. For example, they must address:

- (a) the purposes of the agreement;
- (b) the duration of the agreement;
- (c) the method of appointing or employing necessary personnel;
- (d) the method of financing the resource recovery project;
- (e) the ownership interest of each owner;
- (f) the procedures for the disposition of property when the agreement expires or is terminated;
- (g) it must include any agreement of the parties prohibiting or restricting alienation or partition of the undivided interests of an owner;
- (h) the construction and repair of the project;
- (I) the administration, operation, and maintenance of the project;
- (j) the creation of a committee of representatives of the parties, provisions;
- (k) if the parties agree, a provision that if any party defaults the other parties may perform or assume the obligations of the defaulting party;
- (l) provisions for indemnification of construction, operation and etc., and
- (m) methods for amending and terminating the agreement.

AMENDS: 17B-2a-403

ENACTS: 19-6-508

METRO TOWNSHIP AMENDMENTS

SB 150

Sen. Karen Mayne

This bill is intended to clean up some issues related to the metro townships legislation that passed in the 2015 General Session. As such, its effects are mostly limited to counties of the first class. The bill clarifies that the transition of operations, services and functions provided by county to those assumed by the metro township will occur as smoothly as possible with proceedings pending before the county continuing without change until altered by a valid ordinance. County ordinances will remain in effect as a metro township ordinances until the metro township amends the ordinance.

Instead of mandating that the district attorney provide legal services to metro townships, the bill allows the district attorney to provide legal counsel to the metro township by agreement. The bill inserted “metro township” in several places in the Utah Code where “municipality” is defined or where cities and towns are listed to clarify that a metro township should be considered a municipality like cities and towns or have the same authority or obligations as cities and towns as stated in those modified sections of the Code. The bill provides that a municipal services district may enter into an agreement with the county for the provision of legal services and allows the executive of the district to nominate a general manager. The bill also changes the Election Code in several areas to include metro townships. Finally, the bill explains that the official oaths and bonds of metro township officers must be filed with the county clerk.

AMENDS: 10-2a-405, 10-3c-103, 10-3c-203, 11-14-102, 11-17-2, 11-39-101, 11-41-102, 17B-1-102, 17B-1-502, 17B-1-1308, 17B-2a-1106, 17B-2a-1110, 17B-2a-1111, 20A-1-102, 2-A-5-301, 20A-6-401, 20A-6-402, 20A-7-101, 20A-7-501, 32B-1-102, 32B-1-202, 32B-2-402, 32B-4-202, 32B-5-403, 52-1-1, 63G-6a-103 and 63I-1-220

ENACTS: 10-2a-414 and 52-1-5.1

COMMUNITY DEVELOPMENT AND RENEWAL AGENCIES ACT REVISIONS

SB 151

Sen. Wayne Harper

This bill revamps Title 17C, which governs redevelopment agencies and the establishment of redevelopment project areas. Since the bill is comprised of 262 pages and contains 7317 lines of text, I will summarize only the most important changes here.

First, beginning on May 10, 2016, a community that hasn’t already created a redevelopment agency (RDA) or community development and renewal agency (CDRA) under previous law, may create a “community reinvestment agency” (CRA). In other words, new agencies will be called community reinvestment agencies instead of redevelopment agencies or community development and renewal agencies.

Second, beginning on May 10, 2016, the bill provides that an agency will no longer be authorized to create urban renewal project areas, economic development project areas (EDAs), and community development project areas (CDAs). Instead, an agency’s sole option will be to create a community reinvestment project area (CRPA). There are two ways in which a CRPA may be funded: (1) the agency negotiates and enters into an interlocal agreement with each taxing entity to receive all or a portion of the taxing entity’s tax increment or sales and use tax revenue (similar to a CDA); or (2) the agency creates a taxing entity committee (TEC) and the TEC determines what portion of each taxing entity’s tax increment the agency will receive (similar to a URA). Under the bill, the interlocal agreement route appears to be the default route since a CRA may only choose the TEC route if the agency plans to use eminent domain to acquire property within the CRA, which requires the agency to first conduct a blight study and make a blight determination.

Third, for a community reinvestment project area that is subject to a taxing entity committee, the bill requires an agency to allocate at least 20% of the agency’s annual tax increment for housing

or homeless assistance under 17C-1-412. For a community reinvestment project area that is subject to an interlocal agreement, the bill requires agencies to allocate at least 10% of the agency's annual tax increment for housing or homeless assistance under 17C-1-412. Furthermore, the bill adds an option under 17C-1-412 for an agency to give the agency's housing allocation to a housing authority established by the county in which the agency is located.

Fourth, the bill amends and clarifies the required contents of an agency's annual November 1 report. The bill also specifies that the November 1 report must be submitted electronically whereas previously a report could be filed on paper.

Fifth, the bill clarifies how a project area's incremental value is factored into the new growth calculation. Basically, upon expiration of a project area's tax increment collection period, any incremental value (the value above and beyond the base value multiplied by the percentage of increment allocated to the agency) is considered new growth value and will not be offset by decreases in centrally assessed or locally assessed value elsewhere.

Finally, the bill makes several other changes, such as providing a process for an agency to dissolve a project area and authorizing an agency to acquire by eminent domain property that a property owner fails to develop in accordance with a participation agreement.

AMENDS: 10-1-203, 10-3-1303, 10-9a-508, 11-25-2, 11-25-3, 11-27-2, 11-31-2, 11-32-2, 11-34-1, 11-49-102, 11-50-102, 11-52-102, 14-1-18, 15-7-2, 17C-1-101, 17C-1-102, 17C-1-103, 17C-1-202, 17C-1-203, 17C-1-204, 17C-1-205, 17C-1-207, 17C-1-208, 17C-1-302, 17C-1-402, 17C-1-403, 17C-1-404, 17C-1-405, 17C-1-406, 17C-1-407, 17C-1-408, 17C-1-409, 17C-1-410, 17C-1-411, 17C-1-412, 17C-1-413, 17C-1-502, 17C-1-504, 17C-1-505, 17C-1-506, 17C-1-507, 17C-1-508, 17C-1-602, 17C-1-603, 17C-1-605, 17C-1-606, 17C-1-607, 17C-2-102, 17C-2-103, 17C-2-105, 17C-2-106, 17C-2-108, 17C-2-109, 17C-2-110, 17C-2-201, 17C-2-203, 17C-2-204, 17C-2-206, 17C-2-207, 17C-2-303, 17C-3-102, 17C-3-103, 17C-3-105, 17C-3-107, 17C-3-108, 17C-3-109, 17C-3-201, 17C-3-203, 17C-3-205, 17C-3-206, 17C-4-102, 17C-4-103, 17C-4-104, 17C-4-106, 17C-4-107, 17C-4-108, 17C-4-109, 17C-4-201, 17C-4-202, 17C-4-203, 17C-4-204, 20A-7-613, 35A-8-504, 38-1b-102, 53-3-207, 53A-16-106, 53A-16-113, 53A-17a-133, 53A-17a-164, 53A-19-105, 59-2-913, 59-2-924, 59-2-924.2, 59-2-924.3, 59-7-614.2, 59-12-603, 63G-7-102, 63G-9-201, 63I-1-259, 63N-2-103, 63N-2-104, 63N-2-105, 63N-2-107, 63N-2-108, 63N-2-502, 63N-2-505, 63N-2-507, 63N-2-508, 67-1a-6.5 and 72-1-208

ENACTS: 17C-1-102.5, 17C-1-201.1, 17C-1-209, 17C-1-301.1, 17C-1-401.1, 17C-1-501.1, 17C-1-601.1, 17C-1-701.1, 17C-1-702, 17C-1-801, 17C-1-901, 17C-2-101.1, 17C-2-101.2, 17C-3-101.1, 17C-3-101.2, 17C-4-101.1, 17C-4-101.2, 17C-5-101, 17C-5-102, 17C-5-103, 17C-5-104, 17C-5-105, 17C-5-106, 17C-5-107, 17C-5-108, 17C-5-109, 17C-5-110, 17C-5-111, 17C-5-112, 17C-5-113, 17C-5-201, 17C-5-202, 17C-5-203, 17C-5-204, 17C-5-205, 17C-5-206, 17C-5-301, 17C-5-302, 17C-5-303, 17C-5-304, 17C-5-305, 17C-5-306, 17C-5-307, 17C-5-401, 17C-5-402, 17C-5-403, 17C-5-404, 17C-5-405 and 17C-5-406

RENUMBERS AND AMENDS:

17C-1-201.5, (Renumbered from 17C-1-201), 17C-1-301.5, (Renumbered from

17C-1-301), 17C-1-401.5, (Renumbered from 17C-1-401), 17C-1-501.5, (Renumbered from 17C-1-501), 17C-1-601.5, (Renumbered from 17C-1-601), 17C-1-701.5, (Renumbered from 17C-1-701), 17C-1-802, (Renumbered from 17C-2-401), 17C-1-803, (Renumbered from 17C-2-402), 17C-1-804, (Renumbered from 17C-2-403), 17C-1-805, (Renumbered from 17C-2-501), 17C-1-806, (Renumbered from 17C-2-502), 17C-1-807, (Renumbered from 17C-2-503), 17C-1-808, (Renumbered from 17C-2-504), 17C-1-809, (Renumbered from 17C-2-505), 17C-1-902, (Renumbered from 17C-1-206), 17C-1-903, (Renumbered from 17C-2-602), 17C-1-904, (Renumbered from 17C-2-601), 17C-1-905, (Renumbered from 17C-2-603), 17C-2-101.5, (Renumbered from 17C-2-101), 17C-3-101.5, (Renumbered from 17C-3-101) and 17C-4-101.5, (Renumbered from 17C-4-101)

REPEALS: 17C-1-303, 17C-3-301, 17C-3-302, 17C-3-303, 17C-3-401, 17C-3-402, 17C-3-403, 17C-3-404, 17C-4-301, 17C-4-302, 17C-4-401 and 17C-4-402

UTAH CODE SECTIONS AFFECTED BY COORDINATION CLAUSE:
59-2-924

INDIGENT DEFENSE

SB 155

Sen. Todd Weiler

Under U.S. Supreme Court case law, the provision of Sixth Amendment indigent defense services is a state obligation through the Fourteenth Amendment. On October 26, 2015, the Judicial Council Study Committee on the Representation of Indigent Criminal Defendants in Trial Courts issued its final report on Utah's provision of Indigent Criminal Defense services. This report, and the accompanying Sixth Amendment Center's report, were critical of Utah's provision of Indigent Criminal Defense services. The two main problems with Utah's system, as claimed in the studies, were lack of central oversight and lack of funding, which contributed to some contract defenders struggling to manage their high caseloads. Senator Todd Weiler championed the effort to legislatively address these concerns and worked closely with several strategic stakeholders.

This legislation recognizes the state's constitutional responsibility for the provision of indigent defense services and the collaborative assistance by local indigent criminal defense systems to fairly provide effective representation in the state, consistent with the safeguards of the United States and Utah constitutions. It creates the first ever Utah Indigent Defense Commission (UIDC), an independent state commission housed with CCJJ, consisting of 11 voting members from various stakeholder groups – practicing criminal defense attorneys, an attorney representing minority interests from the Utah Bar, director of a county public defender organization, members from UAC, ULCT, a retired Judge, one legislator, and the director designee of CCJJ – with 2 ex officio, nonvoting members consisting of UIDC's director and a member from the AOC.

Among its several duties, the UIDC will develop and adopt guiding principles for the assessment and oversight of criminal defense systems under certain specified minimum standards. The UIDC will:

- develop and oversee the establishment of advisory caseload principles and guidelines;
- review contracts and interlocal agreements;

- investigate, audit, and review the provision of indigent criminal defense services;
- deal with resolution of complaints;
- annually report to the governor, Legislature and Judicial Council;
- award grants to indigent criminal defense systems under specified criteria for
 - the establishment and maintenance of a statewide indigent criminal defense data collection system;
 - indigent resources; and
 - indigent defense services, including critical need defense services;
- encourage and aid in the regionalization of indigent criminal defense services;
- submit proposed recommendations for improvement in the provision of indigent defense services to each branch of government; and
- identify and encourage best practices.

Indigent criminal defense systems must cooperate with the Commission, but will not be required to provide services in excess of minimum safeguards.

Local indigent criminal defense systems will be required to maintain their current levels of funding, adjusted by growth and inflation, but may adopt local resolutions applying for grants from a restricted account in three areas:

- (1) data collection;
- (2) resources; and
- (3) defense services from a \$1,500,000 appropriation.

Another \$500,000 was appropriated to establish staffing for the UIDC.

The UIDC will be subject to GRAMA and Utah's Open and Public Meetings Act.

Lastly, and marginally related, Senator Weiler included tag-on legislation attempting to address concerns over 2015 legislation that provides the courts may not provide representation as court-appointed counsel for a parent or legal guardian in any action initiated by a private party, except that in a private action to terminate parental rights the court may appoint counsel to represent an indigent parent if it finds that the failure to appoint counsel will result in a deprivation of due process.

AMENDS: 63J-1-602.5, 77-32-201, 77-32-301, 77-32-302, 77-32-306 and 78A-6-1111

ENACTS: 77-32-801, 77-32-802, 77-32-803, 77-32-804, 77-32-805, 77-32-806, 77-32-807, 77-32-808, 77-32-809 and 77-32-810

PAWNSHOP AMENDMENTS

SB 157

Sen. Daniel Thatcher

This bill may be a bit of a hassle to train and implement for both law enforcement and prosecutors. The goal of the bill is to alleviate a growing problem we've all seen – that pawnshop stores commonly refuse to return property to original victims who have identified their property and agreed to cooperate in a prosecution. Yes, in many cases, a pawnshop receiving notice of such cooperation will still charge that original victim to get their own stolen property back – just to earn an extra buck.

The bill does three things:

First, it creates a definition of a “retail media item” – which is a DVD, CD, or video game, and creates an exemption from reporting and holding such item – but only if the pawn or secondhand store “(B) receives [the] used retail media items as a trade-in for similar new or used retail media items;” – meaning, it cannot be an item traded for cash, or for any high dollar non-similar item.

Next is the meat of the bill. Under the hold section at 13-32a-109:

- (8) (a) When the purpose for the hold on or seizure of an article, for which an original victim who has complied with Section 13-32a-115 has been identified is terminated, the law enforcement agency requiring the hold or seizure shall:
 - (I) document the original victim who has positively identified the item of property; and (ii) provide the documented information concerning the original victim to the prosecuting agency to determine whether continued possession of the article is necessary for purposes of prosecution, as provided in Section 24-3-103.
- (b) If the prosecuting agency determines that continued possession of the article is not necessary for purposes of prosecution, as provided in Section 24-3-103, the prosecuting agency shall provide a written or electronic notification to the law enforcement agency which authorizes the return of the article to an original victim who has complied with Section 13-32a-115.
- (c) (I) A law enforcement agency shall promptly provide notice to the pawn or secondhand business of the authorized return of the article under this Subsection (8).
 - (ii) The notice shall identify the original victim, advise the pawn or secondhand business that the original victim has identified the article, and direct the pawn or secondhand business to release the article to the original victim at no cost to the original victim, or if the article was seized, the notice shall advise that the article will be returned to the original victim within 15 days, except as provided under Subsection (8)(d).
- (d) The pawn or secondhand business shall release an article under Subsection (8)(c) unless within 15 days of receiving the notice the pawn or secondhand business complies with Section 13-32a-116.5.

To summarize, once the law enforcement agency and prosecutor have identified the original victim and concluded the property may be returned, the pawn or secondhand business must return the property within 15 days, or do the following:

New Section 13-32a-116.5

- (1) If a pawn or secondhand business has received notice from a law enforcement agency under Section 13-32a-109 that an article which was the subject of a hold or seizure shall be returned to an identified original victim, the pawn or secondhand business may contest the determination and seek a specific alternative disposition if within 15 days:
 - (a) the pawn or secondhand business gives notice to the identified original victim, by certified mail, that the pawn or secondhand business contests the determination to return the article to the original victim; and
 - (b) files a petition to determine rightful ownership of the article as provided in Section 24-3-104.

- (2) A pawn or secondhand business is guilty of a class B misdemeanor if the pawn or secondhand business:
- (a) holds or sells an article in violation of a notification from a law enforcement agency that the item is to be returned to an original victim; and
 - (b) the pawn or secondhand business does not comply with the requirements of this section within the time periods specified.

Note that if a pawn or secondhand store does not return the item and hasn't filed a petition to contest returning the property under Section 24-3-103 within 2 weeks, it is a crime. The police officer should then go to the pawn or secondhand store and seize that item as evidence of the crime. Hopefully this will put a stop to pawn businesses re-victimizing known original victims. But, we'll see.

Lastly, this bill amends the section which deals with appointments to the Secondhand Merchandise Board, so that appointments are made every four years, staggered by two years.

AMENDS: 13-32a-102, 13-32a-109, 13-32a-109.5, 13-32a-112, 13-32a-115 and 13-32a-116
ENACTS: 13-32a-116.5

HIGHWAY SIGNAGE AMENDMENTS

SB 161

Sen. Stuart Adams

This bill allows companies to qualify for "on-premise" sign regulations when the sign and business are part of a "unified commercial development." This bill is aimed to assist property owners with advertising in commercial developments that appear homogenous but are really owned by multiple property owners. The definition of "unified commercial development" is narrowly drafted; it has many requirements and all of them need to be satisfied. This sign regulation has been narrowly defined. This bill also specifies enforcement procedures and requirements for certain unlawful outdoor advertising.

AMENDS: 72-7-502, 72-7-503, 72-7-504 and 72-7-508
ENACTS: 72-7-504.6

CRIME VICTIMS COUNSEL AMENDMENTS

SB 162

Sen. Kevin Van Tassell

This bill adds to the Crime Victims Counsel a representative of Utah's Native American community, appointed by the Director of Indian Affairs after input from federally recognized tribes in Utah.

AMENDS: 63M-7-601

LOCAL GOVERNMENT MODIFICATIONS

SB 164

Sen. Deidre Henderson

This bill :

1. No longer requires the State Auditor to provide the tentative budget forms for cities, towns or metro-townships;
2. Requires that if a city, town, metro-township, local district, or interlocal entity has a deficit balance at the end of the last fiscal year, it must appropriate for that deficit, in the current budget, an amount that is at least 5% of the total revenue fund for that prior year or the total amount of the deficit, whichever is smaller;
3. Requires that, in addition to the annual financial report the town or metro-township clerk (or equivalent) must present, a quarterly financial report - or more often if the council so requires;
4. Requires that counties that have a tourism, recreation, cultural, convention and airport facilities tax must prepare an annual report specifying the expenditures in each of the areas, in lieu of an audit; and
5. Changes who decides the allocation of partial tax payments.

Before this bill, a local entity had the discretion of how to allocate partial payments. Now, if the county treasurer receives less than full payment from its tax assessment, the taxpayer has the right to direct the allocation of that payment.

AMENDS: 10-5-107, 10-5-114, 10-5-129, 10-6-111, 10-6-117, 10-6-135, 10-6-139, 11-13-513, 11-42-401, 17-31-5.5, 17B-1-613, 17B-1-902 and 59-2-1317

RETROSPECTIVE OPERATION

The provisions regarding the allocation of partial payments are retrospective to January 1, 2016.

OLENE WALKER HOUSING LOAN FUND AMENDMENTS

SB 169

Sen. Todd Weiler

This bill prohibits a municipality from adopting an ordinance that prohibits a homeless shelter from operating year-round. The bill also modifies the activities for which the executive director of the Department of Workforce Services may distribute money from the Olene Walker Housing Loan Fund. Finally, the bill specifies that applications for projects and activities that are intended to minimize homelessness take first priority over other applications.

AMENDS: 35A-8-504, 35A-8-505, 35A-8-507 and 63I-1-210

ENACTS: 10-9a-526

EFFECTIVE DATE: March 21, 2016, upon being signed by the governor.

JUDICIARY AMENDMENTS

SB 181

Sen. Lyle Hillyard

This bill makes amends a variety of judicial procedure code sections. It:

1. Provides that, in a legal action filed against a county, a district court judge of the defendant county may transfer venue to any county contiguous to the defendant county;
2. Limits the time for appeal from a justice court to 28 days;
3. Eliminates a defendant's right to a hearing de novo for a finding of a plea in abeyance violation, BUT;
4. Provides that the defense may appeal de novo any sentence imposed after the revocation of a plea in abeyance in justice court;
5. Allows both the prosecution and defense to file a de novo appeal of any adverse restitution order of a justice court, and
6. Allows both the prosecution and defense to file a de novo appeal of any adverse expungement decision from a justice court.

AMENDS: 63G-7-502, 77-7-25, 78A-6-1111, 78A-7-106, 78A-7-118, 78B-2-213, 78B-6-807

DEPARTMENT OF PUBLIC SAFETY AMENDMENTS

SB 183

Sen. Curt Bramble

This legislation:

- allows State Bureau of Investigations to create a Cyber Crimes Unit;
- allows investigations of Public corruption by DPS;
- provides that the members of the Motor Vehicle Safety Inspection Advisory Council shall be appointed by the commissioner of public safety; and
- provides that the commissioner of public safety may authorize the off-duty use of DPS emergency vehicles.

AMENDS: 53-1-108, 53-1-204, 53-8-203 and 53-10-302

REPEALS: 58-37-21

PROCUREMENT CODE MODIFICATIONS

SB 184

Sen. Scott Jenkins

This bill modifies the State Procurement Code by:

- modifying some provisions related to the head of an independent procurement authority;
- substantially modifying exemptions from the procurement code and exceptions to the standard procurement process;
- granting authority to purchase items based on an established price list; and
- modifying procedure for different types of procurement.

The bill also amends requirements for reporting illegal conduct under the state procurement

code and clarifies the procedure for denying contracts or cancelling contracts entered into under the procurement code.

PRACTICE POINTER:

Local government procurement units and procurement officers need to carefully review these updates to the procurement code. Local governments that do not follow the state procurement code may want to review these revisions and consider enacting similar revisions in their local government procurement rules.

AMENDS: 17B-2a-818.5, 19-1-206, 53A-1a-511, 63A-5-205, 63C-9-403, 63F-1-205, 63G-6a-103, 63G-6a-105, 63G-6a-106, 63G-6a-107, 63G-6a-109, 63G-6a-203, 63G-6a-401, 63G-6a-501, 63G-6a-603, 63G-6a-604, 63G-6a-606, 63G-6a-609, 63G-6a-611, 63G-6a-703, 63G-6a-707, 63G-6a-707.5, 63G-6a-708, 63G-6a-709, 63G-6a-802, 63G-6a-803, 63G-6a-806, 63G-6a-1206, 63G-6a-1206.5, 63G-6a-1502, 63G-6a-1503.5, 63G-6a-1601, 63G-6a-1602, 63G-6a-1603, 63G-6a-1702, 63G-6a-1703, 63G-6a-1903, 63G-6a-2002, 63G-6a-2003, 63G-6a-2105, 63G-6a-2407, 63G-10-403, 72-6-107.5 and 79-2-404

ENACTS: 63G-6a-106.5, 63G-6a-113, 63G-6a-114, 63G-6a-115, 63G-6a-410, 63G-6a-507, 63G-6a-802.3, 63G-6a-802.7, 63G-6a-1206.3 and 63G-6a-1601.5

REPEALS & REENACTS: 63G-6a-303, 63G-6a-605 and 63G-6a-706

RENUMBERS AND AMENDS: 63G-6a-110, (Renumbered from 63G-6a-402), 63G-6a-111, (Renumbered from 63G-6a-407), 63G-6a-112, (Renumbered from 63G-6a-406), 63G-6a-409, (Renumbered from 63G-6a-502) and 63G-6a-506, (Renumbered from 63G-6a-408)

REPEALS: 63G-6a-104, 63G-6a-403, 63G-6a-404, 63G-6a-503, 63G-6a-504 and 63G-6a-505

SECTIONS AFFECTED BY COORDINATION CLAUSE: 63G-6a-103 and 63G-6a-116

EFFECTIVE DATE: March 28, 2016, upon being signed by the governor.

LABOR REMEDY AMENDMENTS

SB 185

Sen. Jani Iwamoto

A complaining party subject to discriminatory or prohibited employment practice regarding compensation, may receive an additional amount equal to the back pay amount already available as a remedy unless the respondent shows the act or omission was in good faith and the respondent had reason to believe it was not discrimination under this chapter.

Additionally, this bill requires the Division of Antidiscrimination and Labor to report to the Business and Labor Interim Committee on the effectiveness of the commission and state law in addressing discrimination in matters of compensation.

PRACTICE POINTER:

This bill requires no action by local governments other than to disseminate the

additional criteria to the appropriate staff.

AMENDS: 34A-5-104 and 34A-5-107

RECLASSIFICATION OF MISDEMEANORS

SB 187

Sen. Daniel Thatcher

This 56 page piece of legislation is a continuance of the legislative efforts from 2015 to reclassify certain criminal offenses. There are over 40 sections and subsections of the code that were impacted by being reduced from class C misdemeanors to infractions. The topics include the traffic code, motor vehicle inspections, water rights, damaging government survey monuments, willfully misrepresenting material facts regarding qualification for or excuse from jury service, and very much else in between. There is now no possibility of jail time for these offenses, and therefore no right to a court appointed attorney or a jury trial. It is strongly recommended that everyone reviews the specific code sections for greater detail.

In a break from the vast majority of the bill, one section of the Utah Boating Act was actually reclassified from an infraction to a class C misdemeanor. One can now face increased penalties for a violation of the provisions of 73-18-15.1, Vessel navigation and steering laws.

AMENDS: 4-31-104, 10-9a-611, 10-9a-802, 13-32-106, 17-23-15, 17-23-17, 20A-1-604, 26-15-13, 41-1a-401, 41-1a-702, 41-1a-1206, 41-6a-601, 41-6a-609, 41-6a-904, 41-6a-1626, 41-6a-1630, 41-6a-1631, 41-12a-303.2, 53-1-116, 53-3-305, 53-3-412, 53-8-209, 53B-3-107, 72-7-403, 72-7-404, 72-7-405, 72-7-406, 72-7-407, 72-7-408, 72-7-409, 73-18-6, 73-18-7, 73-18-8, 73-18-8.1, 73-18-15.1, 73-18-15.2, 73-18-15.3, 73-18-16, 76-9-702.3, 76-9-706, 78B-1-115 and 78B-8-304

REPEALS: 4-31-112

OPEN AND PUBLIC MEETINGS ACT

SB 190

Sen. Karen Mayne

This bill modifies the definition of “specified body” to mean:

“an administrative, advisory, executive, or legislative body that is not a public body, that consists of at least three members, and includes at least one member that is a legislator and officially appointed by the president of the Senate, the speaker of the House, or the governor.

A “specified body” does not include a public body as defined by OPMA. Unless specifically provided for, the OPMA does not apply to a special body.

AMENDS: 52-4-103 and 52-4-202

EFFECTIVE DATE: March 18, 2016, upon being signed by the governor.

STUDY ON CLAIMS EXCEEDING STATUTORY LIMIT

SB 192

Sen. Jani Iwamoto

This bill encourages the formation of an informal working group or task force to study how, if at all, the Legislature should address statutory limits on individual and aggregate claims brought under the Utah Governmental Immunity Act seeking damages for personal injury. The Legislature instructs the voluntary, informal working group or task force to study possible options to the current statutory system for dealing with legitimate, large individual and aggregate personal injury damage claims while still protecting taxpayer money and limited government resources.

ENACTS UNCODIFIED MATERIAL

VEHICLE REGISTRATION AND INSURANCE

SB 194

Sen. Curtis Bramble

- This bill does two things.
- 1st: It allows a person driving a rental car to show the rental agreement to satisfy the registration requirements.
 - 2nd: When a school district authorizes a public entity to use a school bus, the school district is not required to insure the bus during the state entities use.

This bill requires the state entity to insure the bus, indemnify the district, and makes any insurance carried by the school district the secondary insurance.

AMENDS: 41-1a-214, 41-12a-301 and 41-12a-303.2

RESALE OF PROCUREMENT ITEM AMENDMENTS

SB 197

Sen. Karen Mayne

If you sell an item, that you acquired through the procurement process, back to the entity from which you purchased it, you can only accept cash! You cannot receive a credit, discount or other incentive for a future purchase, and you cannot use it to acquire an additional procurement item.

AMENDS; 11-54-101, 11-54-102, 11-54-103 and 63G-6a-110

IMMUNITY AMENDMENTS

SB 203

Sen. J. Stuart Adams

This bill clarifies that governmental entities and their employees are immune from suit for any injury that results from the implementation or failure to implement measures to respond to a national, state, or local emergency, including but not limited to the use, provision, operation, and

management of an emergency shelter, housing, a staging place, or a medical facility. The bill further explicitly clarifies that a person or entity owning a building or other facility, and an operator of or an employee in a building or facility, is immune from liability with respect to any decisions or actions related to emergency or public health conditions while acting under the general supervision of, or on behalf of, any public entity.

AMENDS: 63G-7-201 and 63G-8-201

ETHICS REVISIONS

SB 205

Sen. Ralph Okerlund

This bill clarifies that the Utah Public Officers' and Employees' Ethics Act does not apply to a conflict of interest that exists solely due to the fact that one individual holds more than one government position.

AMENDS: 67-16-11

COHABITANT ABUSE PROCEDURES ACT REVISIONS

SB 206

Sen. Lyle Hillyard

This bill clarifies several confusing and contradictory provisions of the law concerning the release of domestic violence offenders (person charged with a DV offense) who have been arrested.

A DV offender may not be released before:

- 1) the matter is submitted to a magistrate; or
- 2) the offender signs a jail release agreement.

There will be no release of the defendant unless he or she agrees in writing, or the magistrate orders that the defendant will not:

- A) have personal contact with the alleged victim;
- B) threaten or harass the alleged victim; or
- C) knowingly enter the residence of the alleged victim.

If the magistrate makes a finding of probable cause, the magistrate then has duties as follows:

- I) determine whether defendant should be held without bail;
- ii) determine whether any release conditions, including electronic monitoring, are necessary to protect the victim;
- iii) set bail that is required to guarantee defendant's subsequent appearance.

A magistrate shall schedule the initial appearance of a person charged with a DV offense to take place no later than 96 hours after the arrest. If the defendant fails to appear, the jail release agreement conditions continue to apply.

If the prosecutor fails to file charges against a person who was arrested for a DV offense and

who appears as ordered, the court may, upon motion by the prosecutor, extend the release conditions by no more than 3 days, and must order the arrested person to appear at a time scheduled before the end of the granted extension period. Unless extended, the release conditions expire on midnight of the day on which the arrested person is scheduled to appear.

AMENDS: 77-36-1, 77-36-2.5 and 77-36-5

RETIREMENT AMENDMENTS

SB 208

Sen. Todd Weiler

If retirement benefits are enhanced during a general or special legislative session requiring additional costs, this bill requires the Utah State Retirement Board to increase certified employer contribution rates to reflect those increased costs, effective July 1, 2016. The bill also amends the definition of "regular full-time employee" to exclude from retirement participation: (a) classified school employees who work on a contract for the purposes of vocational rehabilitation; and (b) the employment and training of people with significant disabilities that have been set aside from procurement requirements under UCA 63G-6a-805 or 41 U.S.C. Sec. 8501 et seq.

AMENDS: 49-11-301; 49-12-102; 49-13-102; 49-22-102.

EFFECTIVE DATE: March 25, 2016, upon being signed by the governor.

WILDLAND FIRE SUPPRESSION FUND

SB 212

Sen. Vickers

This bill creates a restricted account to fund wildland fire suppression. An initial \$2,000,000 has been deposited into this fund. In the future, 30% of mineral lease bonus payments will be deposited into this account.

AMENDS: 59-21-2, 63J-1-314, 63J-1-315, 63J-3-103, 63N-3-106 and 65A-8-204

MOTOR VEHICLE INSURANCE AMENDMENTS

SB 215

Sen. Stephen Urquhart

This bill amends the rights of subrogation on the part of under insured motorist carriers and makes a technical change in the order of the language of the statute.

AMENDS: 31A-22-305.5

FAIR HOUSING ACT AMENDMENTS

SB 219

Sen. Todd Weiler

The bill authorizes the Division of Antidiscrimination and Labor, established under the Labor Commission, to initiate a civil action in a court to enforce the terms of a conciliation agreement in the event of a breach.

AMENDS: 57-21-8 and 57-21-9

CAPITOL PROTOCOL AMENDMENTS

SB 221

Sen. Mark Madsen

Although this bill deals primarily with protocols on capitol hill, it also modifies definitions on Interfering with a Public Servant and Disorderly Conduct.

32B-4-415 is amended to prohibit bringing alcoholic beverages onto the capitol hill complex. This would apply the general criminal provisions of 32B to any licensee or establishment bringing alcohol on to the capitol complex.

41-6a-1401 is amended to include as illegal parking, occupying a space identified reserved for specific users without the appropriate placard or identifying marker.

53-8-105 is amended to specify that the Highway Patrol has a duty to enforce state laws and rules governing the use of the capitol hill complex.

In an interesting response to demonstrations from last year, 76-8-301, Interference with a Public Servant, is expanded to include a person who, on property owned or controlled by the state or political sub-division, willfully denies to a public servant lawful freedom of movement, use of the facilities, ingress, egress, etc. The new provisions are Class C Misdemeanors while the existing provisions in Interference with a Public Servant remain a Class B Misdemeanor.

Disorderly Conduct, 76-9-102, is amended to include obstruction of vehicular or pedestrian traffic “in a public place”. “Public place” has its definition expanded to include “public buildings and facilities”.

AMENDS: 32B-4-102, 32B-4-415, 41-6a-1401, 53-8-105, 63C-9-301, 76-8-301 and 76-9-102

NOTICE OF PENDENCY OF ACTIONS AMENDMENTS

SB 225

Sen. Todd Weiler

This bill modifies provisions relating to the filing of a notice of pendency of action against real property. It prohibits filing a notice of pendency of action with the county recorder until the

party has filed the underlying action in the court. This bill also adds specific liability and damage provisions in the event that a notice of pendency is improperly filed.

AMENDS: 78B-6-1303 and 78B-6-1304
ENACTS: 78B-6-1304.5

MULTICOUNTY ASSESSING AND COLLECTING LEVY AMENDMENTS

SB 228

Rep. Howard Stephenson

The bill allows the Multicounty Appraisal Trust levy to be used to develop a uniform personal property statement, including implementation of a statewide electronic filing system.

AMENDS: Section 59-2-1606

PERSONAL PROPERTY AMENDMENTS

SB 245

Rep. Deidre Henderson

SB 245 provides that “any pipe laid in or affixed to land” is personal property. This reverses a Commission and district court decision that found pipes to be real property.

PRACTICE POINTER:

The Bill is unclear as to who should be assessed the value of a right of way on private land to lay the pipes. As such, it is probably reasonable for the assessor to assume that the value (or cost) of the right of way to lay the pipes on private property should also be assessed to the owner of the pipes, not the real property owner.

AMENDS: Section 59-2-102

EFFECTIVE DATE: January 1, 2017

ALCOHOLIC BEVERAGE POLICY AMENDMENTS

SB 250

Sen. Jerry Stevernsen

This bill amends several provisions regarding alcoholic beverage policies. One amendment prohibits the sale of alcohol through a window or door to a vehicular traffic area. So, no selling alcohol through the drive-through window. The bill also amends the formula for determining the amount of licenses issued throughout the state for each of the following types of licenses:

- full-service restaurant licenses;
- limited-service restaurant licenses;
- on-premise banquet licenses;
- on-premise beer retailer licenses; and

- reception center licences.

This new formula will allow for more of each license to be granted by the commission throughout the state.

AMENDS: 32B-5-307, 32B-6-203, 32B-6-303, 32B-6-304, 32B-6-603, 32B-6-703, 32B-6-803, 32B-8a-202, 32B-8a-203, 32B-8a-302 and 32B-8a-401

REPEALS: 32B-8a-301 and 32B-8a-403

EFFECTIVE DATE: May 10, 2016;

Except for the following sections, which became effective upon March 18, 2016, the date upon which the governor signed the bill: 32B-6-203; 32B-6-303; 32B-6-703; 32B-6-803.

WATER INFRASTRUCTURE FUNDING AMENDMENTS

SB 251

Sen. Stuart Adams

This is the infamous Bear River development and Lake Powell pipeline development bill. Preparation for the use of certain appropriations made in a separate bill, this bill sets up the framework for studying and developing rules, criteria, target processes and plans for the construction of these two large projects. The initial funding for these projects is to be taken out of certain future transportation appropriations. The elimination of this funding should not affect projects currently planned and underway, but may, affect future transportation projects while at the same time providing water to areas of the State in significant need.

AMENDS: 73-10g-104, 73-10g-105, 73-27-102 and 73-27-103

DISTRIBUTION OF LOCAL SALES TAX REVENUE

SB 258

Sen. Ralph Okerlund

This bill provides for a minimum distribution of local sales and use tax revenue to an eligible county, city or town. The bill defines “Eligible county, city or town” and provides that the minimum distribution is the greater of the total amount of sales and use tax revenue the county, city or town received for fiscal year 2004-2005 or the distribution amount under Utah Code 59-12-205(2), which is a prorated amount based on population and location of the transaction.

AMENDS: 59-12-205, 59-12-302, 59-12-354, 59-12-403, 59-12-603, 59-12-703, 59-12-802, 59-12-804, 59-12-1102, 59-12-1302, 59-12-1402, 59-12-2013 and 59-12-2206

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