

# ULCT LEGISLATIVE UPDATE



2009  
LAND USE BILLS

## MISC. LAND USE

### **HB27 Protection of Agricultural Practices – Rep. Morley**

**ULCT Position: Neutral as Amended**

**Status: Passed**

This bill eliminates the presumption that agricultural operations are conducted in accordance with sound agricultural practices and provides that agricultural operations are not nuisances.

#### **Municipal Implication:**

The bill essentially creates a rebuttable presumption that agricultural practices are not a nuisance if they are conducted in accordance with sound agricultural practices. The bill does, however, allow for a nuisance to be declared if it is demonstrated that the practice is a general threat to health, safety and welfare of the public. This provision was put in at the request of the ULCT.

### **SB 216 Revisions to Military Installation Development Authority -- Sponsor: Sen. Mark Madsen**

**ULCT Position: Oppose**

**Status: Passed**

The bill modifies the definitions of "development project" and "project area"; modifies the authority of the military installation development authority; provides that a project area may include specified private land, with the consent of the land's owner.

#### **Municipal Implication:**

This bill has impact on a proposed development in Summit County for a piece of Department of Defense property that has been identified for a recreational establishment for veterans. The bill allows the Military Installation Development Authority to act as the governing body for land-use, tax and redevelopment efforts on the property and an adjacent 100 acres of private property. By granting such rights to the MIDA Board, Summit County is effectively precluded from acting in that capacity. The bill does have a delayed effective date of Oct. 1, 2009 to allow the Air Force, Summit County and Park City to work together on an agreed upon site and solution. The bill could also apply to other areas where Department of Defense property is located.

## **HB 68 Substitute Development Exactions – Rep. Painter**

**ULCT Position: Support**

**Status: Passed**

This bill enacts a definition of "water interest"; places limitations and restrictions on the imposition of an exaction for a water interest by a county, a county's culinary water authority, or a municipality; and requires culinary water authorities to provide the basis for its calculations of projected water interest requirements.

### **Municipal Implication:**

This is a Land Use Task Force bill that resulted from 2008's HB51 Water Forfeiture bill. It was designed to address the unlikely situation in which a jurisdiction has sufficient water rights for its 40 year projection of future demands. If a jurisdiction already has sufficient water rights to meet its 40 year demand, then it no longer can exact water from developers (until its demand again exceeds its supply). The bill defines the term "water interest" to include all forms by which a municipality may hold water: deeded water rights, contract rights, shares in water companies, leaseholds, etc. For all municipalities, the bill requires that a water exaction must be based on a written formula and calculation that the applicant may scrutinize, and ultimately, may challenge as disproportionate to the proposed impact.

## **HB 141 Second Substitute Billboard Amendments – Rep. C. Frank**

**ULCT Position: Neutral as substituted**

**Status: Passed**

This bill modifies the criteria under which a county or municipality is considered to have initiated the acquisition of a billboard structure by eminent domain when the county or municipality prevents the billboard owner from relocating the billboard; modifies the height limitation applicable to a billboard erected by an owner who modifies, upgrades, or relocates a billboard; increases from 60 to 90 days the period during which a county or municipality and billboard owner have to agree to a mutually acceptable location before the county or municipality is considered to have initiated the acquisition of a billboard by eminent domain; modifies the allowable height of an outdoor advertising sign whose height is adjusted by the owner because of an obstruction due to state agency action; and adds definitions to county and municipal land use provisions and to the Utah Outdoor Advertising Act.

### **Municipal Implication:**

This bill will have some municipal impacts when dealing with the relocation of a billboard sign that has an obstructed view. The bill defines what constitutes "clear visibility" and then establishes that when relocated the billboard owner is entitled to clear visibility. There are, however, restrictions placed on that standard to ensure that the municipality maintains control of the height and

spacing of billboards. In addition, the bill creates a visibility distinction between signs located on the freeway and signs located on surface streets.

### **164 Third Substitute Migratory Bird Production Areas – Rep. Oda**

**ULCT Position: Neutral as substituted and amended**

**Status: Passed**

This bill authorizes the creation of a migratory bird production area; authorizes a landowner to remove land from a migratory bird production area; requires a municipality to have the written permission of all landowners within a migratory bird production area to annex land within the production area; clarifies the effect the creation of a migratory bird production area would have on receiving the benefits of the Farmland Assessment Act; prohibits a county from enacting certain ordinances regarding a migratory bird production area; requires a county to exclude activities associated with a migratory bird production area from being a public nuisance; and establishes a defense for a migratory bird production area in civil or criminal nuisance actions.

#### **Municipal Implication:**

This bill originally would have created an additional environmental hurdle prior to initiation of eminent domain proceedings for the completion of public improvements and would have also allowed for the creation of Migratory Bird Production areas with little or no oversight or notice to the affected municipal or county government. Once amended and substituted at the ULCT request all references to condemnation were removed from the bill, so no additional standard was created prior to initiating condemnation proceedings. In addition, the bill was amended to ensure that local governments were noticed and allowed to protest the creation of a migratory bird production area. Also, the bill limits annexations of established production areas unless all property owners agree to the annexation. Lastly, at our request, the bill was amended to require that the establishment of a production area be designated prior to July 1, 2010 in order to better limit the frivolous creation of production areas.

### **HB 272 Third Substitute Utah Scenic Byway Designation Amendments – Rep. Herrod**

**ULCT Position: Neutral as substituted**

**Status: Passed**

This bill changes the membership of the Utah State Scenic Byway Committee; provides that the governor shall appoint certain members to the Utah State Scenic Byway Committee; provides that the term of office for Utah State Scenic Byway Committee members is four years, except that the governor shall stagger certain terms; provides that the Legislature shall approve highway and state scenic byway nominations for National Scenic Byway or All-American Road

designation; provides that a highway located within a county, city, or town within this state may not be included as part of a designation or nomination as a state scenic byway, National Scenic Byway, or All-American Road unless the nomination or designation is sanctioned in writing by an official action of the legislative body of each county, city, or town in which the highway passes.

**Municipal Implication:**

This bill statutorily codifies many of the practices already undertaken by the Utah Scenic Byway Committee. The bill does however, require that the affected local governments agree to the designation of a scenic byway prior to that byway being established. The bill also requires the approval of the local government if an existing scenic byway is to be segmented. If the local government fails to respond to a request for segmentation, the bill also provides an appeal provision to allow the segmentation request to go directly to the state scenic byway committee. The bill was highly scrutinized by the State Department of Tourism, Economic Development as well as the ULCT to ensure heightened local government participation in the designation and segmentation process for scenic byways.

**HB 205 Water Source Protection Amendments – Rep. M. Noel**

**ULCT Position: Watch**

**Status: Passed**

This bill limits the requirement to adopt a water source protection ordinance to counties of the first or second class; and limits the authorization of a municipality to adopt a water source protection ordinance to municipalities located within a county of the first or second class.

**Municipal Implication:**

Removes the implication in the law that municipalities are charged with the responsibility to be in the water source protection business.

**1<sup>st</sup> Sub. SB 68 Mining Protection Amendments -- Sponsor: Sen. Sheldon Killpack**

**ULCT Position: Neutral as Substituted**

**Status: Passed**

This bill provides certain protection for specified mining uses of a mine operator that holds a large mine permit issued by the Division or Board of Oil, Gas, and Mining that have resulted, as of a specified date, in the production and selling of commercial quantities of a mineral deposit and that existed before a political subdivision limits the mining use; provides that vested mining uses, as defined, constitute a mining protection area; extends to mining protection areas some of the same protection or similar protection afforded agriculture and industrial protection areas; establishes a conclusive presumption for a vested mining use;

defines features of a vested mining use; provides for the rights of a mine operator with a vested mining use; and provides a process for a mine operator to abandon a vested mining use.

**Municipal Implication:**

One of several bills introduced this session to circumvent local planning and zoning, in this case, primarily, for the Kennecott mines. The bill was modified early in the session to exclude sand and gravel operations. It was further limited toward the end of the session to pertain only to currently-owned lands or veins contiguous thereto.

**SB 115 Payment of Mobile Home Park Relocation Expenses -- Sponsor: Sen. Wayne Niederhauser**

**ULCT Position: Support**

**Status: Passed**

This bill authorizes counties and municipalities to use certain property tax revenues to pay relocation expenses of mobile home park residents displaced by development activities that change the use of the property; and authorizes taxing entities to share certain property tax revenues with counties and municipalities for the purpose of paying those relocation expenses.

**Municipal Implication:**

This bill provides additional options for municipalities to assist in the relocation efforts for displaced mobile home park residents. In order to avoid challenges relating to an illegal gift of public funds, state law had to be amended to establish relocations efforts as a public purpose, and therefore allow the funds to be used for said purpose. The bill also allows for tax increment funds from RDA's to be used for relocations expenses as well.

**SB 153 County and Municipal Land Use Amendments --Sponsor: Sen. Mark Madsen**

**ULCT Position: Support**

**Status: Passed**

This bill prohibits counties and municipalities from requiring, as a condition of land use application approval, a person to obtain documentation regarding a school district's willingness, capacity, or ability to serve the development proposed in the land use application; prohibits counties and municipalities from charging fees that exceed applicable costs; and requires counties and municipalities, on request, to itemize and show the basis of fees they impose.

**Municipal Implication:**

This is a Land Use Task Force bill that was introduced to address the allegation that some jurisdictions were allowing school districts a "bite" of the exactions apple in the development process by allowing them to hold up development

approval until they had reached an accord with the developer and then issued a “will serve” letter. In another UDOT-related context, the State Supreme Court had already outlawed the practice of local jurisdictions exacting concessions from developers to serve purposes that were unrelated to their municipal mission. This bill codifies the common law. Further, some jurisdictions were using development permit fees as a revenue generating opportunity (beyond the cost of processing the permit or providing the service). This practice is now illegal.

## **ANNEXATION**

### **HB61 Second Substitute Local Government Entity Changes – Rep. Holdaway**

**ULCT Position: Support as Substituted**  
**Status: Passed**

This bill modifies and clarifies the process of certifying local government changes that affect or create local government boundaries and local government name changes. The bill provides a process for certifying final local entity plats for local government boundary changes; eliminates a requirement for municipalities to prepare articles of incorporation as part of the incorporation process and eliminates an alternative to filing articles of incorporation; modifies the authority of city officers-elect; modifies the duties of the lieutenant governor, county surveyors, and county recorders in the process of certifying local government boundary and name changes; modifies the process for a municipality to change its name; establishes the date of recording documents related to a boundary action as the effective date of the boundary action for purposes of assessing property affected by the boundary action; imposes restrictions on a local entity's imposition of property taxes, assessments, or fees until documents related to the boundary action are recorded; modifies the event from which the effective date of a municipal annexation or boundary adjustment is calculated.

#### **Municipal Implication:**

Technical bill which should make it easier to incorporate, annex, or certify boundary change agreements.

### **1<sup>st</sup> Sub. SB 73 Unincorporated Area Amendments -- Sponsor: Sen. Karen Mayne**

**ULCT Position: Support as Substituted**  
**Status: Passed**

This bill modifies the municipal annexation process with respect to a proposed annexation of an area included within a township to include a process for withdrawal of the area from the township; repeals a provision prohibiting a municipality from denying, under certain circumstances, a petition proposing the

annexation of an area located in a county of the first class; modifies the process for establishing a township and the authority of a county legislative body with respect to the establishment of a township.

**Municipal Implication:**

This bill fundamentally changes township status in Salt Lake County. The bill removes the concept of forced annexations which precluded a city from denying an annexation if the property taxes for municipal services for the annexing area would be lower if located within the city boundaries. The bill also allows for an annexation of an area located within a township if the area meets the annexation petition requirements and is approved by the accepting city and the county. If the county denies the annexation an independent panel is established to determine if the annexation shall proceed. The independent panel is comprised of one member appointed by the city, one member appointed by the county and then one member appointed by the other two appointees. This committee has final say in granting the annexation. The bill also includes provisions on how townships shall be established, which now requires an election. It also includes a dissolution by election process and withdrawal by petition process for townships This bill is fairly complex in how it interfaces with current state law and should be read in context for a more complete understanding.

**1<sup>st</sup> Sub. SB 171 Municipal Annexation Amendments -- Sponsor: Sen. Scott Jenkins**

**ULCT Position: Support**

**Status: Passed**

This bill modifies a provision requiring the owner's signature on an annexation petition if only part of the parcel is proposed to be included in an annexation to specify that property with multiple parcel numbers but owned by the same owner is considered to be a single parcel; and provides that a municipality may annex an area without a property owner annexation petition if the area is an unincorporated island or peninsula of 50 acres or less and the municipality and county agree the area should be annexed. Removes the protest ability of a county in third through sixth class counties if the area to be annexed has not commercial, industrial or residential development and the landowner petitions for the annexation.

**Municipal Implication:**

This bill makes it easier to annex land into municipalities in three specific contexts: 1) if the land is undeveloped and the property owner wants to annex, the annexation can no longer be protested by "affected entities". Therefore, the land can be annexed if the municipality so desires; 2) if the land is within a peninsula or island, is less than 50 acres, and the county and the city agree that it belongs within the city, in rural counties, the land now can be annexed without the property owner's consent; 3) if the owner has multiple parcels of contiguous land, for annexation purposes, the land will be considered a single parcel. This

provision will limit the discretion of the boundary commission over multiple parcels owned by a single landowner.

## **SUBDIVISIONS, AMENDMENTS AND STREET VACATIONS**

**SB 209 Land Use, Development, and Management Act Amendments --**

**Sponsor: Sen. Greg Bell**

**ULCT Position: Support**

**Status: Passed**

This bill modifies county and municipal provisions relating to the notice required for a proposed subdivision or an amendment to a subdivision and makes them apply to amendments only; modifies county and municipal provisions relating to a hearing and notice requirement for a proposal to vacate, alter, or amend a public street or right-of-way to: make the provisions apply to a proposal to vacate some or all of a public street, right-of-way, or easement; replaces the land use authority with the legislative body as the body responsible to hold a public hearing and provide notice.

### **Municipal Implication:**

This bill makes major changes to the subdivision approval process in the notice and hearing requirement area. These changes bring the subdivision approval process into compliance with the administrative nature of this land use action.

The legislation removes the requirement of a Planning Commission recommendation to the Legislative body for not only plat approval but on plat amendments and street vacations as well. The designated Land Use Authority is responsible for final approval of subdivision plats. A public hearing on subdivision applications is now not required by law. As for altering, vacation or amending plat amendments the designated Land Use Authority is required to hold a hearing within 45 days of the application if certain exemptions are not met.

In the case of street vacations the bill requires that the legislative body take final action and that they are required to hold one public hearing. Further, it makes it possible to vacate streets that are not part of a subdivision plat.

The new law also changes the notice provisions for plat approval and street vacation to allow for ten day notice prior to the public meeting where the plat will be considered. The bill also removes the provision to notify affected entities during the preliminary plat stage for multi unit residential or commercial or industrial projects.

## **IMPACT FEES**

### **HB 259 Substitute Changes to Impact Fees – Rep. Sandstrom**

**ULCT Position: Neutral as Substituted**

**Status: Passed**

This bill enacts a definition of "charter school" in impact fee provisions; repeals obsolete language relating to impact fees; clarifies the purposes of an impact fee capital facilities plan; modifies provisions relating to the written analysis associated with impact fees; modifies provisions relating to an impact fee enactment; limits impacts fees that can be imposed on a school district or charter school; requires local political subdivisions and private entities to ensure that their impact fees comply with the requirements of this bill, even if the impact fee was earlier imposed but not paid; requires a local political subdivision or private entity to participate in mediation of any applicable fee if the state, a school district, or a charter school requests mediation; narrows a limitation on a county and municipality's ability to impose regulations on the location of a facility to apply only to certain educational facilities.

#### **Municipal Implication:**

Allows municipalities to fully apply land use ordinances to school district buildings that are not schools (bus barns, food preparation, administration buildings). Requires charter schools and traditional public schools to be treated the same for impact fee purposes, and to pay all impact fees except a parks impact fee. (We don't know of any jurisdiction who charged a school a parks impact fee.) The bill requires both public and charter schools to submit plans and encourages them to submit plans early, to "vest" their plans in current impact fee ordinances. The bill creates an informal mediation process for impact fees.

### **1<sup>st</sup> Sub. SB 8 Impact Fees Revisions -- Sponsor: Sen. Greg Bell**

**ULCT Position: Support**

**Status: Passed**

This bill shortens from 14 to 10 days the period of time before a public hearing date that a notice of a capital facilities plan or amendment is required to be given; shortens from 14 to 10 days the period of time before adoption of an impact fee enactment that a local political subdivision is required to submit a copy of the written impact fee analysis and applies that time period to a new requirement to obtain a written certification; modifies impact fee reporting requirements; requires a local political subdivision to obtain a written certification from the person or entity that prepares the written impact fee analysis and specifies the content of that certification.

#### **Municipal Implication:**

A product of the Land Use Task Force, this bill brings notice mandates for impact fees into the notice parameters under LUDMA. It allows impact fees to be charged on nonresidential development for the proportionate share of the cost of typical fire trucks (> \$500,000). Further, it creates a standard of professional conduct for those who prepare impact fee analyses so cities can be better assured that the analyses that they pay professionals to prepare are ones which actually comply with the Impact Fees Act. Finally, the bill removed the requirement to report extensively about Impact Fee cash flows in the CAFR. The reporting is still required, but as a separate document, certified by your chief financial officer, and sent to the State Auditor.

### **HB 274 Substitute Local Government Fees and Charges – Rep. Wallis**

**ULCT Position: Support with Amendments**

**Status: Passed**

This bill requires specified public agencies to submit a development plan and schedule to local authorities to allow the local authorities to make assessments to provide information to the public agencies for inclusion in the process of compiling a development budget; provides that the specified public agencies vest in applicable local provisions, maps, and fees; clarifies that the fees which must be paid by an applicant before being entitled to approval of a land use application are application fees; limits hookup and other fees imposed by counties, municipalities, local districts, and special service districts.

#### **Municipal Implication:**

Sets up a fair and balanced process by which the state will pay all impact fees (except a parks impact fee) for all state construction. This resolves a longstanding dispute with the state over whether they are required to pay impact fees. The bill has parallel provisions with HB259 and clarifies that impact fees, by any name, are still impact fees that are regulated by the Impact Fees Act. The bill adds a fair amount of clarity to the Impact Fees Act, without modifying its essence in any respect.

## **NOTICE AND OPEN MEETINGS**

### **SB 26 Open and Public Meetings Act – Meeting Record -- Sponsor: Sen. Peter Knudson**

**ULCT Position: Support as Amended**

**Status: Passed**

This bill clarifies that the minutes of a meeting must include information requested to be added by a member only if that information was part of the proceedings of the meeting; provides specific circumstances as to when the

written minutes of an open meeting become a public record; requires a public body to establish and implement procedures for approval of written minutes; requires that a recording of an open meeting must be available to the public for listening within three business days after the meeting; repeals a requirement that a recording must be converted to written minutes within a reasonable time upon request; provides that a meeting recording is not required for site visits or traveling tour or for certain small local districts.

**Municipal Implication:**

This bill will have some impact on cities current meeting recording requirements. The bill specifies that meeting minutes are deemed to be public records once they have been completed and are ready for the governing body's inspection. Because those minutes have not yet been approved by the governing body, it should be noted that the minutes are not yet approved and are unofficial until the governing body votes to approve the minutes. The bill also requires that the city or town establish, in ordinance, a formal process for approving minutes if such a process is not already outlined. Lastly, the bill requires that the audio recording of a public meeting be made available for public inspection within three business days of the meeting.

**HB 118 Archives and Grama Revisions – Rep. Aagard**

**ULCT Position: Neutral**

**Status: Passed**

This bill adds a title section for the Archives and Records Service chapter; provides definitions; modifies language to comply with standardized definitions; provides that intentional and knowing destruction or mutilation of the record-copy of a record in violation of a retention schedule is a class B misdemeanor; clarifies that an employee of a governmental entity may be disciplined or fired for intentionally and knowingly destroying or mutilating a record in violation of a retention schedule.

**Municipal Implication:**

This bill clarified that knowingly and intentionally destroying a record-copy of a record with the intent to hide public information is a class B misdemeanor. The ULCT ensured that the bill was clear that this only applied to the record-copy of a record and also made it clear that the penalties only applied if it can be proven that the person destroyed the record copy with the intent of hiding public information. The bill will have limited applicability.

**HB 323 Amendments Regarding Notice on Utah Public Notice Website – Rep. Winn**

**ULCT Position: Watch**

**Status: Passed**

This bill modifies the notice that certain entities are required to provide before preparing a proposed general plan or amendment, long-range plan, or capital facilities plan so that: some entities are required to provide notice on the Utah Public Notice Website rather than to the state planning coordinator; and those entities not required to provide notice on the Utah Public Notice Website but that voluntarily provide notice on that website need not provide notice to the state planning coordinator.

**Municipal Implication:**

This bill clarifies that land-use amendments that include general plan changes, long range plan changes, or capital facilities plan changes must be properly noticed on the Utah Public Notice Website. It also clarifies that if such notices are posted on the website that the additional notice to the state planning coordinator is not required. If, however, a jurisdiction is not required to use the Public Notice Website due to its small size, it still has to provide notice to the planning coordinator unless it chooses to voluntarily use the Utah Public Notice Website. This should be a fairly simply change in the noticing process for these items.

**3<sup>rd</sup> Sub. SB 208 Utah Public Notice Website Amendments -- Sponsor: Sen. Stephen Urquhart**

**ULCT Position: Support**

**Status: Passed**

This bill amends provisions of the Utah Code to allow posting of legal notices on a website administered by the media.

**Municipal Implication:**

This bill went through several iterations, and finally ended up as a bill that allows for the creation and posting of legal notices on a website that will be administered by the media. The bill does require that notices be posted in the newspaper as well as the website beginning on January 1, 2010, but the website host(s) are precluded from charging a fee for the posting. It is anticipated that when a legal notice is purchased they newspaper will automatically upload the information to the website for you. The bill also states that the requirement to post in the newspaper will phase out on January 1, 2012 for those located in counties of the first and second class. At that time entities in counties of the first and second class will only be required to post the notices on the website and cannot be charged more than \$10 for a legal notice posting.

## **BUILDING**

**HB 327 Building Inspector Amendments – Rep. Aagard**

**ULCT Position: Support**

**Status: Passed**

This bill requires that a local regulator issuing a single-family residential building permit provide for a review of the building permit inspection.

**Municipal Implication:**

City Managers, Mayors and City Administrators can be asked to intervene in the personnel-related aspects of building code enforcement. We are not certain how this will change current practice, in that a citizen could always report a disrespectful staff member to the City Manager.

**HB 402 Enforcement of Carbon Monoxide Detector Requirements – Rep. K. Garn**

**ULCT Position: No Position Taken**

**Status: Passed**

This bill prohibits counties and municipalities from enforcing ordinances, rules, or regulations requiring the installation or maintenance of carbon monoxide detectors in residential dwellings against anyone other than the occupant of the dwelling, subject to an exception for new construction; and clarifies that local health department authority does not include the authority to enforce ordinances, rules, or regulations requiring the installation or maintenance of carbon monoxide detectors in residential dwellings against anyone other than the occupant of the dwelling.

**Municipal Implication:**

This bill requires that the enforcement of local ordinances governing the installation of carbon monoxide detectors can only be enforced against the tenant of the dwelling, functionally limiting the ability to enforce the ordinance requirement on the owner of rental dwelling. This bill may require those entities who have ordinances governing installation of carbon monoxide detectors to amend the enforcement provisions of the ordinance to apply only to the tenant in existing dwellings. The ability to enforce with the owner is permitted on new construction.

**SB 211 Building Code Amendments -- Sponsor: Sen. Curtis Bramble**

**ULCT Position: Neutral as Amended**

**Status: Passed**

The bill modifies the powers and duties of the Uniform Building Code Commission, including: authorizing the commission to recommend building codes to the Legislature for adoption; and authorizing the commission to adopt building codes for public welfare during the legislative interim that are repealed at the end of the next legislative session; modifies the powers and duties of the Fire Prevention Board, including:

authorizing the board to recommend fire codes to the Legislature for adoption; and authorizing the board to adopt fire codes for public welfare during the legislative interim that are repealed at the end of the next legislative session.

**Municipal Implication:**

The bill transfers the power of the Uniform Building Code Commission and the Fire Prevention Board to the state legislature with respect to changes statewide construction code policies.