

2014 LEGISLATIVE UPDATE

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A cooperative project of:

Utah Prosecution Council
Statewide Association of Prosecutors
Layton City Attorney's Office
Salt Lake County District Attorney's Office
Utah Association of Counties
Utah Attorney General's Office

Legislative Summary 2014 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 2013 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 2013 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 that 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 4, 2014, this publication will be downloadable from the Utah Prosecution Council web site: www.upc.utah.gov.

**UNLESS OTHERWISE INDICATED, LEGISLATION PASSED
DURING THE 2014 GENERAL LEGISLATIVE SESSION
BECOMES EFFECTIVE ON MAY 13, 2014.**

All legislation passed during the 2014 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 13, 2014, the effective date of most legislation passed during the 2014 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, 2014 Edition will contain all amendments made to the code during the 2014 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: (651) 687-7000 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

OVERDOSE REPORTING AMENDMENTS

HB 11

Rep. Carol Spackman Moss

If six cumulative criteria are met, this bill creates an affirmative defense to an allegation of:

- possession or use of less than 16 ounces of marijuana;
- possession or use of a scheduled or listed controlled substance other than marijuana; and
- any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b, Imitation Controlled Substance Act.

The six cumulative criteria are:

The person:

- (1) reasonably believes that the person or another person is experiencing an overdose due to use of a controlled substance;
- (2) reports in good faith the overdose to a medical provider, an emergency medical service provider, a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this amendment;
- (3) provides in the report a functional description of the actual location of the overdose that facilitates responding to the person experiencing the overdose;
- (4) remains at the location of the person experiencing the overdose until a responding law enforcement officer or emergency medical service provider arrives, or remains at the medical care facility where the person experiencing the overdose is located until a responding law enforcement officer arrives;
- (5) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person experiencing the overdose and any substances the person may have taken; and
- (6) is alleged to have committed the offense in the same course of events from which the reported overdose arose.

“Good faith” under this amendment does not include seeking medical assistance during the course of execution of a search warrant, an arrest warrant, or other lawful search. It is a sentencing mitigating factor if a person acted in accordance with the above and that person was nevertheless convicted for violating an offense under Title 58, Chapter 37, Utah Controlled Substances Act.

AMENDS: 57-37-8.

ENACTS: 76-3-203.11.

EFFECTIVE DATE: March 20, 2014, upon being signed by the Governor.

RURAL WASTE DISPOSAL

HB 13

Rep. Rhonda Rudd Menlove

Adds a new section to the Solid and Hazardous Waste Act that allows individuals to bury nonhazardous solid waste on their own property. It allows for such burials only where:

- (a) the individual lives in an area where no public or duly licensed waste disposal service is available;
- (b) the individual owns the nonhazardous solid waste; and
- (c) the nonhazardous solid waste is generated on the individual's private property.

Additionally, the bill authorizes the Solid and Hazardous Waste Control Board to make rules to administer this section.

ENACTS: 19-6-124.

ADMINISTRATIVE RULEMAKING AMENDMENTS

HB 14

Rep. Curtis Oda

This bill pertains to agencies and their rulemaking procedures. An agency* is currently required to review its rules within five years of the rule's effective date, and every five years thereafter, then determine to either continue, repeal, or amend the rule. The Division of Administrative Rules (DAR) is to give 180 days advance notice that the rule is due for review. The major substantive change of HB 14 is to clarify that the DAR need only "make a reasonable effort" to notify agencies 180 days in advance of the need for a review, and that the review must occur even if the 180 day notice is not provided.

*NOTE: "Agency" is defined in 63G-3-102(2). The definition could be clearer, but appears to exclude "political subdivisions" as being subject to these requirements. It might be wise to find a sponsor to amend the definition so as to make very clear that counties and cities are not subject to the requirements.

AMENDS: 63G-3-305.

EFFECTIVE DATE: July 1, 2014.

DRIVER LICENSE SUSPENSION AMENDMENTS

HB 15

Rep. Douglas Sagers

This bill requires the Driver License Division to shorten a person's currently-in-effect one or two year suspension or denial period down to six months for administrative actions taken against a person's driver license based on arrests for violations of sections:

- 32B-4-409, unlawful consumption;
- 41-6a-502, DUI; and

- 41-6a-517, DUI metabolite, if:
 - the driver was under the age of 19 at the time of the arrest;
 - the offense was a first offense committed before May 14, 2013; and
 - the suspension period was based on the same occurrence upon which the following written verifications are based:
 - a court order shortening the suspension for a violation of any section above;
 - a dismissal of a charge for a violation of any section above;
 - a notice of declination to prosecute for a violation of any section above;
 - a reduction of a charge for a violation of any section above; or
 - other written documentation acceptable to the division.

This bill also grants to the division rule-making authority to effectuate the purpose of the bill and requires the driver to pay reinstatement fees if his or her driver license sanction is shortened.

AMENDS: 53-3-223 and 53-3-231.

EFFECTIVE DATE: February 19, 2014, upon being signed by the Governor.

WRONGFUL LIEN AMENDMENTS

HB 16

Rep. Curt Webb

This bill recodifies and amends Chapter 9 of Title 38 pertaining to Wrongful Lines and Wrongful Judgment Liens. The bill renames Chapter 9 as the “Wrongful Lien Act” and divides the Chapter into three parts.

- Part 1, titled “General Provisions,” defines the terms used in the Chapter and sets forth the scope of the Wrongful Lien Act.
- Part 2, titled “Recording a Wrongful Lien,” makes technical and clarifying changes to
 - (1) a county recorders ability to reject a wrongful lien,
 - (2) the procedure for a lien claimant to file and provide notice of a petition to file a lien, and
 - (3) the procedure for a record interest holder to file and provide notice of a petition to nullify a lien.
- Part 3, titled “Recording a Nonconsensual Common Law Document,” is completely new and appears to be a protection for public officials against improper liens. Specifically, Part 3 provides that:
 - “[a] recorded nonconsensual common law document that is recorded on or after May 13, 2014 is void and has no legal effect if the document sponsor does not;
 - (1) comply with [certain] notice requirements . . . ;
 - (2) comply with [certain] judicial enforcement requirements . . . ; and
 - (3) prevail in a judicial enforcement proceeding under Section 38-9-303.”

The bill defines the phrase “nonconsensual common law document” to mean the following:
 (5) *"Nonconsensual common law document" means a document that is submitted to a county recorder's office for recording against public official property that:*

- (a) purports to create a lien or encumbrance on or a notice of interest in the real property;
- (b) at the time the document is recorded, is not:
 - (I) expressly authorized by this chapter or a state or federal statute;
 - (ii) authorized by or contained in an order or judgment of a court of competent jurisdiction; or
 - (iii) signed by or expressly authorized by a document signed by the owner of the real property; and
- (c) is submitted in relation to the public official's status or capacity as a public official.

A “document sponsor” is “a person who, personally or through a designee, signs or submits for recording a document that is, or is alleged to be, a nonconsensual common law document.”

The term “public official property” means “real property that has at least one record interest holder who is a public official.”

A “public official” includes, but is not limited to, members of law enforcement, corrections officers, active members of the Utah State Bar, an individual currently or previously appointed or elected to an elected position in a political subdivision, and an individual currently or previously appointed to or employed in a position in a political subdivision that is a policy making position.

The bill provides that, before a recorded nonconsensual common law document will have any legal effect, a document sponsor must file a complaint in district court within 10 days of recording to initiate a judicial enforcement proceeding and obtain an order from the court specifying that the nonconsensual common law document is valid and enforceable. However, if, as a result of the judicial enforcement proceeding, “a court finds that a recorded nonconsensual common law document is unenforceable, the document sponsor of the nonconsensual common law document is liable to each affected person for any actual damages proximately caused by recording the nonconsensual common law document, costs, and reasonable attorney fees.”

Finally, the bill modifies the definition of “lien” under Utah Code Ann. § 76-6-503, pertaining to the crime of wrongful lien, to include “a nonconsensual common law document.” Thus, a person is guilty of the crime of wrongful lien—a **third degree felony**—if that person knowingly makes, utters, records, or files a nonconsensual common law document “having no objectively reasonable basis to believe he has a present and lawful property interest in the property or a claim on the assets.”

AMENDS: 38-9a-102, 76-6-503.5, 78B-5-201 and 78B-5-408.

ENACTS: 38-9-101, 38-9-201, 38-9-301, 38-9-302, 38-9-303, 38-9-304 and 38-9-305.

RENUMBERS

& AMENDS: 38-9-102, 38-9-103, 38-9-202, 38-9-203, 38-9-204 and 38-9-205.

EFFECTIVE DATE: May 12, 2014.

INTERLOCAL ACT AMENDMENTS

[HB 17](#)

Rep. Johnny Anderson

The bill amends provisions of the interlocal cooperation act regarding the creation of a new entity. An entity is governed by the state statutes that apply to the governments creating the new entity, requires an entity to adopt rules and regulations that conform to those statutes, and permits a choice between two or more governing laws, if those laws are binding on the creating entities and conflict with one another. If a new entity's meetings would be subject to the open meetings act, compliance with that act is mandatory. The IPP is exempt from the new provisions regarding adoption of rules.

AMENDS: 11-13-204, 11-13-223 and 11-13-315.

EFFECTIVE DATE: May 12, 2014.

ELECTRIC VEHICLE BATTERY CHARGING SERVICE

[HB 19](#)

Rep. Patrice M. Arent

With the environmental push to go green, electric vehicles are gaining in popularity. State and local governments that encourage this go-green effort by offering battery charging services, might otherwise be subject to regulatory oversight by the Public Service Commission. This short bill amends Title 54, Public Utilities to provide that the definitions of "electrical corporation" and "public utility" *do not* include certain entities that sell electric vehicle battery charging services unless they are otherwise subject to regulation. Local governments offering this service to employees and others, should consider income and sales tax implications.

54-2-1(7)(b) "Electrical corporation" does not include an entity that sells electric vehicle battery charging services, unless the entity conducts another activity in the state that subjects the entity to the jurisdiction and regulation of the commission as an electrical corporation.

54-2-1(16)(j) "Public utility" does not include an entity that sells electric vehicle battery charging services, unless the entity conducts another activity in the state that subjects the entity to the jurisdiction and regulation of the commission as a public utility.

AMENDS: 54-2-1.

EMERGENCY VEHICLE OPERATOR DUTY OF CARE

[HB 20](#)

Rep. Brad Dee

This legislation is a response to the State's supreme court decision in *Torrie v. Weber County*. This bill states that the operators of a "marked authorized emergency vehicle" do not have a duty of care to the driver of a car that is the suspect in a crime and fleeing. However, the operators of the emergency vehicle may be held liable if they had "actual intent to cause harm" to the fleeing driver

“in an act that was unrelated to the legitimate object of the arrest.”

There is a duty to the passengers if the passengers can demonstrate, by a preponderance of the evidence, that the passenger was there involuntarily.

Again, emergency vehicle operators still have a duty to innocent passengers as well as the traveling public.

AMENDS: 41-6a-212.

SYSTEM OF CARE FOR MINORS IN STATE CUSTODY

HB 21

Rep. Dean Sanpei

This legislation directs counties, through their mental health and substance abuse authorities, to cooperate with the state in the development and implementation of a “system of care” for children in the custody of the State and who are at risk for developing complex behavioral and emotional needs. The bill defines a “system of care” as, in part, providing a “broad flexible array of services.” The bill includes a limitation on that requirement, which provides some protection to counties. These services, and presumably the cooperation, must only be provided within appropriations from the legislature and available county funds.

The bill is intended to support a goal of bringing services together more coherently for children who are in care or under supervision of the state and, frequently, the court. At this point in time the language is a concept without specific requirements. It is important to keep in mind that the responsibilities for county providers are spelled out elsewhere in statute and that this does not expand those duties. Consequently, there was no additional costs estimated for this legislation. There may be actual expectations and costs developed over time as this concept takes shape.

AMENDS: 17-43-201, 17-43-301, 62A-1-104 and 62A-1-111.

EMINENT DOMAIN AMENDMENTS

HB 25

Rep. Lee Perry

Modifies the authority of the Office of the Property Rights Ombudsman and amends the notice provisions of the existing Eminent Domain Statute.

In 2006, the Office of the Property Rights Ombudsman was authorized by statute to prepare written advisory opinions concerning land use decisions or impact fees. This bill expands the Ombudsman’s authority to include the preparation of written advisory opinions concerning whether a condemnor is occupying property for a public use without colorable legal or equitable authority. Once an advisory opinion concludes that a condemnor is illegally occupying private property, a party may obtain an award of attorney fees if an action is brought in district court and the court finds that the condemnor continued to occupy private property without payment of just compensation in disregard of the advisory opinion.

This bill specifies and expands form language that must be included in the written notice sent to affected property owners. Although the language need not be exact (the statute only requires that the information be “in substantially the following form”), condemnors will probably want to copy the language from the statute into the written statement sent out to property owners. A condemnor is now prohibited from bringing legal action to acquire property until thirty days after the required notice has been provided to the property owner.

Finally, the bill deletes a few public uses for which eminent domain may be exercised because the uses are archaic or no longer necessary. Eminent domain can no longer be used to acquire property for the floating of logs and lumber on streams, for telegraph purposes (although the term “telecommunications” and the “transmission of broadcast signals from a station” licensed by the FCC has been added), or for pipelines conducting liquids connected with processing of sugar beets.

AMENDS: 10-8-2, 11-13-314, 13-43-204, 13-43-205, 13-43-206, 78B-6-501, 78B-6-505 and 78B-6-522.

COUNTY RECORDER INDEX AMENDMENTS

HB 29

Rep. Curt Webb

This legislation requires a county recorder to keep an index of water right numbers that are included in a recorded document and include the date and time of the recording of the right. The legislation does not require any such recording prior to May 13, 2014.

This legislation seeks to get a record of water rights not already maintained and to ensure that rights connected to property are recorded with the property. It is another step in the process of developing improved clarity around over-appropriation of water rights.

AMENDS: 17-21-6.

CONTROLLED SUBSTANCES AMENDMENTS

HB 30

Rep. Paul Ray

This bill adds new kinds of “spice” and emerging drug analogs to the list of controlled substances.

AMENDS: 58-37-4.2.

EFFECTIVE DATE: March 20, 2014, upon being signed by the Governor.

POLLUTION CONTROL AMENDMENTS

HB 31

Rep. Ryan Wilcox

This bill clarifies statutory definitions of Pollution Control Facilities and Freestanding Pollution Control Property and provides greater detail to these definitions, presumably because the bill provides a sales tax exemption for both. The definitions are fairly technical, but essentially, a Pollution Control Facility is real property and improvements with the primary purpose of prevention, control, or reduction of air or water pollution by eliminating industrial waste and air contaminants (“primary purpose”), and Free-standing Pollution Control Property is personal property with the same primary purpose. The definitions (and by extension the sales tax exemptions) do not apply to chemicals, cleaning materials, or supplies that are not reusable, septic tanks, sewage systems, air conditioners/fans (for comfort), or office equipment (unless they have the primary purpose referenced above). In addition to the facilities and property themselves, the exemption also applies to property (tangible personal property or electronic) incorporated therein, repair parts for the same, and service performed on the same.

To claim a sales tax exemption, a taxpayer must apply for certification of the property or facility from the director of Utah Department of Air or Water quality, as applicable. An owner, lessee, or operator may request certification. The application for certification shall include a description of the facility or property for which sales tax exemption is being requested. The director of the Department of Air or Water quality will grant certification if the sales tax exemption requirements outlined herein are met. Certification is not required for service, repair, or parts incorporated into the Pollution Control Facilities or Property. The director may revoke certification if she determines that certification was obtained by fraud or gross misrepresentation, or the Facilities or Property do not qualify for the sales tax exemption. Shutdown due to force majeure or obsolescence is not grounds to revoke certification. Judicial review of revocation is provided. If certification is revoked, the Tax Commission shall collect back taxes to the extent allowed by law.

After obtaining certification, the taxpayer may file a claim for refund with the Utah State Tax Commission within the limitation periods provided by statute (within 3 or 6 years of date of certification or payment of taxes, depending on when certification is issued). Interest is also paid on the refund. The effective date of interest differs, depending on when certification is issued and how soon after certification the claim for refund is filed, with the earliest effective date being the date of payment of tax and the latest date being 30 days after claim for refund.

Rulemaking authority is given the Air Quality Board and Water Quality Board to establish procedures for processing/evaluating application for certification, and the issuance or revocation of a certification.

AMENDS: 19-2-102, 59-1-1410 and 59-12-104.

ENACTS: 19-12-101, 19-12-102, 19-12-201, 19-12-202, 19-12-203, 19-12-301, 19-12-302, 19-12-303, 19-12-304 and 19-12-305.

REPEALS: 19-2-123, 19-2-124, 19-2-125, 19-2-126 and 19-2-127.

ELECTION LAW – INDEPENDENT EXPENDITURES

HB 39

Rep. Douglas Sagers

This bill enacts a new subchapter in the election code which pertains to “independent expenditures,” defined as expenditures “expressly advocating the success or defeat of a clearly identified candidate or ballot proposition”. Expenditures are independent if they are not in any way coordinated with a candidate or a campaign manager, etc. Any entity making expenditures totaling \$1,000 or more during an election cycle* must file a report within 30 days of the expenditures. The report must detail to whom and for what the expenditure was made, with names and addresses of any person or entity donating a total of \$1,000 or more to the filer of the Detailed records of expenditures, including invoices, must be maintained for two years. Violators are subject to a fine of \$100.

*NOTE: The term “election cycle,” which is important to this new law, is not defined in the law nor apparently in any other provision of the code.

ENACTS: 20A-11-1701, 20A-11-1702, 20A-11-1703, 20A-11-1704, 20A-11-1705 and 20A-11-1706

REPORTS ON ALTERNATIVE SENTENCING

HB 48

Rep. Susan Duckworth

County Sheriffs are mandated to keep records of the release status and the type of release program or alternative incarceration program for any prisoner released because the jail has reached its maximum operating capacity. (See 17-22-5.5(2)(b)(ii).) The sheriff shall make these records available upon request to the Department of Corrections, the Judiciary, and the Commission on Criminal and Juvenile Justice.

- The bill requires that presentence investigation reports prepared by AP&P shall include:
- the number of days since the commission of the offense that the offender has spent in the custody of the jail, and
 - the number of days, if any, the offender was released to a supervised release or alternative incarceration program under Section 17-22-5.5.

AMENDS: 17-22-5.5, 63M-7-303, and 77-18-1.

INVOLUNTARY FEEDING & HYDRATION OF INMATES AMENDMENTS

HB 50

Rep. Richard Greenwood

This bill adds juveniles that are in a secure facility, or who have been committed to the custody of the Division of Juvenile Justice Services, to the definition of a correctional facility found in Chapter 77-16b – which is the chapter that allows for a petition to seek and enforce involuntary

feeding or hydration of a person in custody. So, this is involuntary feeding and hydration of children in custody who refuse to eat or drink.

AMENDS: 76-16b-102.

RESTITUTION AMENDMENTS

HB 53

Rep. Jeremy Peterson

A juvenile court's jurisdiction terminates upon any of several specified events under 78A-6-120, including upon the juvenile's commitment to a secure youth correction facility.

The statutory language added by this bill, which amends 78A-6-120 (2) (c), makes it clear that when a youth is so placed, the court retains jurisdiction to "make and enforce orders of restitution."

AMENDS: 78A-6-120.

POLITICAL SUBDIVISION JURISDICTIONAL AMENDMENT (FEDERAL LANDS)

HB 67

Rep. Marc Roberts

Last year the legislature granted local governments the authority to address problems on federal lands that were creating an imminent danger for the local government. This bill expands the definition of federal lands by including national monuments and national recreation areas.

The bill also requires a county official, including a sheriff, to coordinate with the respective federal land management agency and the Utah Attorney General's Office before taking action on federal land to protect the health, safety and welfare of the county's citizens in the face of imminent threat to such due to a condition on public lands."

AMENDS: 11-51-102 and 11-51-103.

FORCIBLE ENTRY AMENDMENTS

HB 70

Rep. Marc Roberts

After much anxiety and negotiation it comes down to the following:

Section 77-7-8 deals primarily with force used to make an arrest. The most substantive change in this section is that when a peace officer is making an arrest the officer may forcibly enter a building in which the person to be arrested is located or in which there is "probable cause" for believing him to be. The probable cause is a change from the former standard of reasonable grounds. That is not a huge change but one worth noting. There is also added a requirement that the officer

“identify himself or herself as a law enforcement officer”. This is not much of a change as the section already required the officer to “demand admission and explain the purpose for which admission is desired” which would be very difficult to do without identifying oneself as a police officer.

There is also a change regarding the requirement to identify oneself where there is “probable cause” to believe evidence will be easily or quickly secreted or destroyed. This is a change from the current statutory requirement of “reason to believe”. Note that this change and standard applies only to justifying the entry on the basis that evidence may be destroyed. There is not a change with regard to public safety issues.

The current language of the statute makes a cross reference to Section 77-7-6 which section is not included in the bill. However that section allows entry without identification for public safety fresh pursuit or when a person is actually engaged in the commission of an offense.

Similar changes are made to Section 77-23-210 which deals with force used in executing a search warrant. Again the officer may enter without notice if there is “reason to believe” the notice will endanger the life or safety of the officer or another person. Where entering without notice is to be justified by the fact that evidence may be easily or quickly secreted or destroyed the standard is “probable cause”.

In both of these sections the statute specifically authorizes the officer to “use only that force which is reasonable and necessary”.

77-23-210 also specifically spells out the fact that if an officer approaches a building with a search warrant which does not have a no knock clause and yet the officer on the scene receives enough information to establish probable cause that the evidence may be quickly secreted or destroyed the officer may enter without giving notice. The same is true if the officer on the scene receives information which would establish “reason to believe” that notice would endanger the life or safety of the officer or another.

The standard for issuance of a “no knock” search warrant is spelled out to be “probable cause” for potential destruction of evidence and “reason to believe” if the no knock is issued on the basis of physical harm.

Interestingly enough Rule 40 of the Rules of Criminal Procedure enumerates the procedure for issuing a no knock search warrant but does not state any standard of proof. Therefore this statute does not directly conflict with Rule 40.

There is additional language which states that “the officer shall take reasonable precautions in execution of any search warrant to minimize the risks of unnecessarily confrontational or invasive methods which may result in harm to any person”. Obviously the word “unnecessarily” is the key to this requirement. There’s also language requiring the officer to minimize the risk of searching the wrong premises by verifying that the premises being searched is consistent with the description in the search warrant etc. - that’s always a good plan.

AMENDS: 77-7-8 and 77-23-210.

EFFECTIVE DATE: The effective date of the bill is July 1st, 2014. The reason for the delayed effective date is to allow modification of the application templates in the e-warrant system.

DISTRIBUTION OF INTIMATE IMAGES

HB 71

Rep. Marie Poulson

A new Section 76-5b-203 is enacted to deal with the issue of “revenge pornography”. The latest perverse rage is for a person, after a break up in a relationship, to post intimate photographs of the former partner on internet sites to humiliate, embarrass and otherwise harm the person. It is reported that the effects of such a posting can be very devastating.

The elements of the offense are:

“an actor commits the offense of distribution of intimate images if the actor, with the intent to cause emotional distress or harm, knowingly or intentionally distributes to any third party any intimate image of an individual who is 18 years of age or older if;

- (a) the actor knows the depicted individual has not given consent to the actor to distribute the image;
- (b) the intimate image was created by or provided to the actor under circumstances in which the individual has a reasonable expectation of privacy; and
- (c) actual emotional distress or harm is caused to the person as a result of the distribution under this section.”

This section has a fairly broad definition of “distribute” and spells out in graphic detail the definition of “intimate image.” There is a sub-section of exceptions for distribution for law enforcement or prosecution purposes etc. There is a separate sub-section providing exceptions for an internet service provider or interactive computer service as defined in federal statute. That exception is very extensive and shows considerable lobbying effort by the ISP’s.

The penalty for distribution is a Class A Misdemeanor for a first offense and a 3rd degree felony on a second or subsequent conviction for an offense under this section that arises from a separate criminal episode.

ENACTS: 76-5b-203.

SPEED LIMIT AMENDMENTS

HB 80

Rep. James Dunigan

This bill provides that the posted speed limit on a freeway or other limited access highway may exceed 75 miles per hour if the higher speed limit is based on a highway traffic engineering and safety study. In other words, speed limit on any freeway or limited access highway can be increased to 80 miles per hour pursuant to such a study.

AMENDS: 41-6a-602.

EXCEPTION TO E-FILING REQUIREMENT FOR CITATIONS AND ACCIDENT REPORTS

HB 85

Rep. Jon Cox

Provides that when an officer, while issuing a citation, is not reasonably able to access the e-filing system, the citation need not be filed electronically if it is being filed with a Justice Court. "Not reasonably able" is undefined.

This bill addresses situations where law enforcement officers are in, for example, a canyon or other place where they lose access to the e-filing system. It was also aimed at providing relief for smaller law enforcement agencies which have not acquired the software necessary for e-filing.

AMENDS: 77-7-20.

PROPERTY TAX ASSESSMENT AMENDMENTS

HB 93

Rep. Brian Greene

Requires a county assessor to consider whether a property has "diminished productive value" when assessing the fair market value of property for property tax purposes. The statute defines "diminished productive value" as meaning that the property has a significantly reduced ability to generate income because of a parcel size requirement established under a land use ordinance or zoning map or because of one or more easements burden the property. Regarding the requirement to consider the effect on value of an easement burdening a property, it is important to remember that although an easement often lowers the value of the servient property, the dominant property's value is often increased because of the easement. Because easements are tangible taxable property, a county assessor should insure that the value of the easements is assessed.

ENACTS: 59-2-301.6.

LIMITATION ON LOCAL GOVERNMENT REGULATION OF ANIMALS

[HB 97](#)

Rep. Brian King

The bill prohibits a municipality from adopting or enforcing any breed-specific ordinance or regulation regarding dogs.

AMENDS: 10-8-65.

ENACTS: 18-2-1.

EFFECTIVE DATE: January 1, 2015.

COUNTY OFFICER ELECTION REVISIONS

[HB 99](#)

Rep. Jack Draxler

This legislation provides authority for a county legislative body to pass an ordinance to define the election schedule for county offices when offices have been consolidated. The bill was offered to address a conflict created by legislation from 2011 that put county offices on staggered election schedules.

The legislation should not be needed beyond this year, but it does provide counties the opportunity to define election cycles for combined offices should that be necessary in future.

AMENDS: 17-16-6.

EFFECTIVE DATE: March 6, 2014, upon being signed by the Governor.

ROADWAY AND SIDEWALK SAFETY AMENDMENTS

[HB 101](#)

Rep. Jim Nielson

Have you ever felt uncomfortable withdrawing money at an ATM because there was some shady beggarly-looking character asking for money nearby? Or felt that twinge of guilt stopped near the freeway off ramp – as you stare straight ahead avoiding eye contact with the pan-handler just outside the window? Good news! Your problems are solved. **41-6a-1009. Use of roadway by pedestrians -- Prohibited activities**, is amended to include the following prohibited activities (Class C):

- (4) *(a) An individual may not engage in conduct that impedes or blocks traffic within any of the following: (interstate, freeway, highway, including the shoulders, on ramps, and off ramps).*
- (d) Conduct that impedes or blocks traffic may include:*
 - (i) loitering;*
 - (ii) demonstrating or picketing;*

- (iii) distributing materials;
- (iv) gathering signatures;
- (v) holding signs; or
- (vi) soliciting rides, contributions, or other business.

Next, the bill adds the following prohibited activity:

(b) An individual may not solicit money or goods from another individual in an aggressive manner:

- (I) during the business hours of a bank if either the individual soliciting, or the individual being solicited, is on the portion of a sidewalk that is within 10 feet of the bank's entrance or exit; or
- (ii) on the portion of a sidewalk that is within 10 feet of an automated teller machine. ...

"Aggressive manner" means intentionally

- (A) persisting in approaching or following an individual after the individual has negatively responded to the solicitation;
- (B) engaging in conduct that would cause a reasonable individual to fear imminent bodily harm;
- (C) engaging in conduct that would intimidate a reasonable individual into giving money or goods;
- (D) blocking the path of an individual; or
- (E) physically contacting an individual or the individual's personal property without that individual's consent.

AMENDS: 46-1a-1009.

ASSESSMENT AREA AMENDMENTS

HB 102

Rep. Curt Webb

- This bill amends procedures regarding the creation of a special assessment area. It:
- establishes a moratorium on new SAAs until May 2015;
 - reduces the number of protests needed to stop the creation of an SAA from 50% to 45%; and
 - creates a process requiring the local government to re-adopt and re-designate, by a popular petition process, an SAA that receives 35% protests.

The re-adoption process requires more petition signers than the 35% protestors number, certification of the petition, a public hearing and a unanimous vote of the governing body.

AMENDS: 11-42-102, 11-42-202 and 11-42-206.

ENACTS: 11-42-201.5 and 631-2-211.

PLANT EXTRACT AMENDMENTS

HB 105

Rep. Gage Froerer

The key to this large bill, aside from the very general and somewhat remarkable fact that it does legalize some form of marijuana in the State of Utah, is that it does so with extremely technical definitions, being applied to an extremely narrow exception, resulting in very narrow potential application.

In short form, hemp extract (possesses almost no THC, but is very high in cannabidiol), may be used by a person - or may be administered by a parent to a child - who has been diagnosed by a neurologist with “intractable epilepsy” (which causes frequent seizures) so long as the person has properly registered with the Utah Department of Health and been issued a card for its use, and so long as the hemp extract is in its original sealed, prescribed container.

ENACTS: 4-41-101, 4-41-102, 4-41-103, 26-55-101, 26-55-102, 26-55-103 and, 58-37-4.3/
AMENDS: 63I-1-226 and 63I-1-258.

EFFECTIVE DATE: July 1, 2014.

CONDOMINIUM AND COMMUNITY ASSOCIATION LIEN AMENDMENTS

HB 115

Rep. Carol Spackman Moss

Amends the information that must be included on a notice of lien submitted for recording. If a lien is based on an unpaid assessment or fine under the Condominium Ownership Act (Title 57, Chapter 8) or the Community Association Act (Title 57, Chapter 8a), the notice of lien must now include the amount of the unpaid assessment or fine. The notice of lien must now include (in addition to the name and address which was already required) the phone number of the lien claimant, or the lien claimant must provide the name, address, and phone number of the lien claimant’s representative. This amendment clarifies that when a copy of the notice of lien is mailed to the person against whom it is filed, the notice of lien must include the date the notice of lien was “submitted for recording” and the article number on the certified mail receipt but that information is not required when the notice of lien is first recorded.

AMENDS: 38-12-102.

PATENT INFRINGEMENT AMENDMENTS

HB 117

Rep. Mike McKell

This bill:

- prohibits the distribution of bad faith demand letters asserting patent infringement;
- allows a person who has been the recipient of a demand letter asserting patent infringement to file a civil action;

- allows the court to require the filing of a bond to cover costs of the action;
- provides civil remedies; and
- sets limits on punitive damages.

The bill contains no criminal sanctions.

The bill also provides that the Attorney General may conduct civil investigations and bring civil actions pursuant to the Distribution of Bad Faith Patent Infringement Letters Act (Part 19, Chapter 6 of Title 78B). In an action brought by the Attorney General under this part, the court may award or impose any relief it considers prudent, including:

- equitable relief;
- statutory damages of not less than \$750 per demand letter distributed in bad faith; and
- costs and fees, including reasonable attorney fees, to the Attorney General.

ENACTS: 78B-6-1901, 78B-6-1902, 78B-6-1903, 78B-6-1904 and 78B-6-1905.

OPIATE OVERDOSE EMERGENCY TREATMENT

HB 119

Rep. Carol Spackman Moss

This is a companion “Good Samaritan” bill to HB 11, which is also designed to help decrease deaths from opiate overdoses in Utah. Both bills were supported by the Utah Substance Abuse Advisory Council.

The bill gives medical providers the ability to write a prescription to a family member of, a friend of, or “other person in a position to assist” a person who is at risk of experiencing an opiate related overdose. (NOTE: The last category of persons is purposely broad and meant to include police and medical first responders.)

The person to whom the prescription is given will have the power to administer the prescribed naloxone hydrochloride or other opiate antagonist to a person where there is a reasonable belief that they are experiencing an opiate overdose event. The bill requires the medical provider to provide education to the person receiving this prescription on how to administer the opiate antagonist. That education shall include instructions for the person administering the opiate antagonist to take the person to whom they administer the opiate antagonist for immediate medical evaluation.

The bill also provides immunity to a person who acts in good faith in administering the opiate antagonist.

ENACTS: 26-55-101-104, 58-17b-507, 58-31b-703, 58-67-702, 58-68-702 and 58-70a-505.

CONTINUING EDUCATION ON FEDERALISM

HB 120

Rep. Kent Ivory

This bill requires that the Commission on Federalism create a course of education regarding constitutional federalism principles, with a curriculum established by the bill. Attendance is mandatory once every two years for an employee designated by local governments, state agencies, the attorney general's office and the Legislature's office of general counsel.

AMENDS: 63C-4a-303.

ENACTS: 63C-4a-306.

PROPERTY TAX LIEN AMENDMENTS

HB 123

Rep. Mark Wheatley

Provides that "A county may not reassign a lien created under Title 59, Chapter 2, Part 13, Collection of Taxes on real property." This bill is apparently a preemptive strike to prevent tax lien loan companies from attempting to change Utah law to allow them to purchase tax liens from counties. Counties in Utah do not sell property tax liens and therefore this bill is a "belts and suspenders" approach to ensure that continues to be the case.

ENACTS: 17-50-336.

ELECTRONIC DEVICE LOCATION AMENDMENTS

HB 128

Rep. Ryan Wilcox

This bill will have a huge impact upon the use of GPS devices or the tracking of cellular telephones, by law enforcement. In a world dominated by news coverage of the NSA and 'Big Brother' watching you (with a little hysteria thrown in for good measure), this bill and others like it was not unexpected.

First, if a peace officer has been using anything less than a search warrant to obtain tracking information (or data) for a cellular phone or GPS device, stop. You must now use a warrant.

Second, there will be special notification requirements for every such search warrant (every tracking) that must be sent out after the officer has completed the investigation.

Some of the key language:

77-23c-101

(2) "Electronic device" means a device that enables access to or use of an electronic communication service, remote computing service, or location information service.

(4) "Location information" means information concerning the location of an electronic device that,

in whole or in part, is generated or derived from or obtained by the operation of an electronic device.

77-23c-102

- (1) *(a) Except as provided in Subsection (2), a government entity may not obtain the location information, stored data, or transmitted data of an electronic device without a search warrant issued by a court upon probable cause.*

By definition, then, if an officer uses a GPS device that attaches to a piece of property, or if you use pinging of a cellular phone to towers to locate someone, or if you seek the stored data of any electronic device, the officer must first obtain a search warrant.

Next,

- (1) *(b) Except as provided in Subsection (1)(c), a government entity may not use, copy, or disclose, for any purpose, the location information, stored data, or transmitted data of an electronic device that is **not the subject of the warrant** that is collected as part of an effort to obtain the location information, stored data, or transmitted data of the electronic device that is the subject of the warrant in Subsection (1)(a).*
- (c) A government entity may use, copy, or disclose the transmitted data of an electronic device used to communicate with the electronic device that is the subject of the warrant if the government entity reasonably believes that the transmitted data is necessary to achieve the objective of the warrant.*
- (d) **The data described in Subsection (1)(b) shall be destroyed in an unrecoverable manner by the government entity as soon as reasonably possible after the data is collected.***

The sponsor of the bill believed that any time location information for a cellular phone was obtained, the information of all other cell phones in the area was also obtained. Whether this is true is hard to say, but some say that a “triggerfish” device or “stingray” device does in fact gather third party data. The destruction of information referred to in 1(d) is only of such ‘third party’ information obtained, but not the subject of the warrant.

Finally,

77-23c-103 – Notice Requirements

- (1) Except as provided in Subsection (2), a government entity that executes a warrant pursuant to Subsection 77-23c-102(1)(a) shall, **within 14 days after the day on which the operation concludes**, issue a notification to the owner of the electronic device specified in the warrant that states:*
- (a) that a warrant was applied for and granted;*
- (b) the kind of warrant issued;*
- (c) the period of time during which the collection of data from the electronic device was authorized;*
- (d) the offense specified in the application for the warrant;*
- (e) the identity of the government entity that filed the application; and*
- (f) the identity of the judge who issued the warrant.*

The officer may delay this notification for up to 30 days, upon application, if the court finds that it would endanger the investigation, or another person, or lead to destruction of evidence or the

flight of any person. But eventually, the notification must go out! The service will be by “first class mail” to “the owner of the device” – whoever that is.

ENACTS: 77-23c-101, 77-23c-102 and 77-23c-103.

EFFECTIVE DATE: July 1, 2014.

TEMPORARY HOMELESS YOUTH SHELTER AMENDMENTS

HB 132

Rep. Gage Froerer

This bill provides a legal mechanism for creating a temporary shelter for homeless persons under age 18. In order to achieve that goal, the law relating to reporting a minor as a “runaway” and the law relating to harboring a runaway had to be changed also. In order to provide the authority to shelter the minor, the legislation provides authority for a temporary homeless youth shelter to 1) notify a parent of the runaway status of a youth from the time the shelter learns the individual is a runaway (current law requires “prompt” notification), or 2) to refrain from notifying a parent if there is a court order issued to take the minor into custody. The legislation also provides authority to notify law enforcement that the minor is a runaway but does not require notification to a parent.

This legislation is important for the effort to provide shelter to homeless youth. It is important to public attorneys mainly because the shelter facilities will be operating under the provisions that allow, but do not require, the harboring of a runaway. This is a shift in current public policy that may lead to questions about when an individual must report or stop harboring a runaway against a parent’s wishes.

AMENDS: 62A-4a-501.

ENACTS: 62A-2-108.8

CONTINGENT MANAGEMENT FOR FEDERAL FACILITIES

HB 133

Rep. David Lifferth

Authorizes the Governor, with Congressional approval, to work with the federal government to operate and maintain national parks, monuments, forests and recreation areas in Utah during a fiscal emergency. Statement of intent of the Legislature to appropriate funds to reimburse state governmental entities for money operating such federal areas.

AMENDS: 63G-6a-107, 63I-2-265, 65A-5-1 and 65A-5-2.

ENACTS: 79-4-1101, 79-4-1102 and 79-4-1103.

AMENDMENTS TO DRIVER LICENSE SANCTIONS FOR CERTAIN ALCOHOL OFFENSES

HB 137

Rep. John Knotwell

This bill provides that when a minor has been convicted of violating Section 32B-4-409, unlawful purchase, possession or consumption of alcohol, the court may order the driver license suspension period to be reduced if:

- (1) the violation is the second or subsequent offense for violating that section;
- (2) the minor is 18 or older; and
- (3) the minor provides a sworn statement to the court that he or she has not unlawfully consumed alcohol for at least a one-year consecutive period during the suspension period;

OR

- (1) the violation is the second or subsequent offense for violating that section;
- (2) the minor is under 18; and
- (3) the minor's parent or legal guardian provides an affidavit or sworn statement to the court certifying that, to the best of the parent or legal guardian's knowledge, the minor has not unlawfully consumed alcohol for at least a one-year consecutive period during the suspension period.

Same goes for violations of Section 32B-4-410, unlawful admittance or attempted unlawful admittance by a minor, and Section 76-9-701, intoxication.

AMENDS: 32B-4-409, 32B-4-410, 53-3-219, 76-9-701 and 78A-6-606.

EFFECTIVE DATE: April 1, 2014, upon being signed by the Governor.

UNDERGROUND PETROLEUM STORAGE TANK AMENDMENTS

HB 138

Rep. Steve Eliason

While this bill makes several technical changes and authorizes the lien of property to pay for cleanup costs, the important part for local governments is that a fund is created from which a loan can be obtained for upgrading your underground storage tanks.

AMENDS: 19-6-402, 19-6-404, 19-6-405.7, 19-6-408, 19-6-409, 19-6-410.5, 19-6-411, 19-6-414, 19-6-420, 19-8-119, 63B-1b-102 and 63B-1b-202.

EFFECTIVE DATE: Except as provided below, this bill takes effect on May 13, 2014.
The amendments to Section 19-6-409 take effect on July 1, 2014.
The amendments to Section 19-6-410.5 take effect on January 1, 2015.
The amendments to Section 19-6-420 take effect on July 1, 2015.

PEACE OFFICER AGREEMENTS WITH FEDERAL AGENCIES

[HB 147](#)

Rep. Richard Greenwood

This bill provides a definition of a federal agency and a federal employee; specifies the terms under which a federal agency may enter into an agreement with a county sheriff to enforce federal laws and state and local laws; and requires specified training for federal employees in order for them to participate in the agreement. (See also HB 149 below.)

For purposes of this bill, "Federal agency" means:

- the United States Bureau of Land Management;
- the United States Forest Service;
- the National Park Service;
- the United States Fish and Wildlife Service;
- the United States Bureau of Reclamation;
- the United States Environmental Protection Agency; and
- the United States Army Corps of Engineers.

"Federal employee" means an employee of a federal agency.

IMPORTANT NOTE: Both this bill and HB 149 specifically exclude the following federal law enforcement agents from the provisions of the bills:

- special agents of the Federal Bureau of Investigation;
- special agents of the United States Secret Service;
- special agents of the United States Department of Homeland Security, unless the employee is a customs inspector or detention removal officer;
- special agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives;
- special agents of the United States Drug Enforcement Administration;
- United States marshals, deputy marshals, or special deputy United States marshals; or
- postal inspectors of the United States Postal Inspection Service.

The provides in newly amended 53-13-106(1)(d)(ii) that Federal agencies and federal employees may exercise law enforcement authority related to misdemeanor and felony offenses under Utah law only as established by an agreement as provided in Subsection (1)(d)(iii) and as provided in Section 53-13-106.9 or pursuant to Section 53-13-106.7.

53-13-106(1)(d)(iii) is amended to read, "Consistent with Section 53-13-106.9, county sheriffs may enter into agreements with federal agencies that allow concurrent authority to enforce federal laws and state and local laws, provided that:

(A) the agreement is limited to a term of not more than two years; and

(B) the officers granted authority under the agreement have completed a 20-hour training course that is focused on Utah criminal law and procedure and that is approved by the director of the Peace Officer Standards and Training Division."

The subject matter of this bill is closely intertwined with HB 149 (see below) and the two bills should be read together. In fact, this bill includes a coordination clause that changes some of the bill's language should both this and HB 149 pass. The above includes the language mandated by the coordination clause.

AMENDS: 53-13-106

OFF-HIGHWAY VEHICLE AMENDMENTS

HB 148

Rep. Michael Noel

This is a continuation in a multi-year series of bills that specifies off highway vehicles which, if they have the mandated safety features and instrumentation, may qualify as street legal and may be operated on most roads and highways in the state, except freeways and limited access highways.

(See the summary for [SB 154](#) for changes in cities' authority to restrict ATV use on city streets and about special provisions for Salt Lake County and cities in Salt Lake County.)

This bill address use of "Full-sized all-terrain vehicles." The bill:

- provides and amends definitions;
- provides that a full-sized all-terrain vehicle that meets certain requirements may be operated as a street-legal all-terrain-vehicle on streets and highways, unless the highway is an interstate freeway or a limited access highway; and
- specifies equipment requirements for a full-sized all-terrain vehicle to qualify as a street-legal all-terrain vehicle.

For the full list of off highway vehicles that may be made street legal, and the regulations that apply to such vehicles when driven on public highways and roads, go to the list of sections amended by this bill, particularly Parts 15 and 16 of Chapter 6a, Title 41.

§41-6a-1509(1)(b) allows counties of the 1st class (Salt Lake County), cities within counties of the 1st class and cities with a population of 7,500 or greater to regulate the use of street legal off highway vehicles on the streets of those jurisdictions.

AMENDS: 41-1a-205, 41-6a-102, 41-6a-1509, 41-6a-1629 and 41-22-2.

AMENDMENTS TO FEDERAL LAW ENFORCEMENT

HB 149

Rep. Michael Noel

Last year the legislature passed Rep. Noel's HB 155, which purported to put extensive limitations on the authority of agents of certain federal land management agencies to exercise law enforcement authority within the state of Utah. The bill was immediately challenged in federal court by the United States Attorney's Office. At the request of the US Attorney, the US District Court for Utah issued an order enjoining enforcement of the bill pending the resolution of the case. Before the legal action went any further, the legislature met in special session and repealed 2013's HB 155.

This bill, in a somewhat kinder and gentler way, addresses many of the same issues that were the catalyst for the 2013 bill. It is yet to be seen whether the US Attorney feels this bill unlawfully treads on the prerogative of the federal government to exercise law enforcement authority in Utah. Stay tuned.

Here are the provisions of the bill as set out in the long title.
The bill:

- defines the exercise of law enforcement authority, including on state land, private land, and federal land;
- defines federal employee for the purposes of this bill (see * below);
- defines proprietary jurisdiction of federally managed land;
- describes when state and local law enforcement officers may recognize a federal employee's exercise of law enforcement authority;
- describes the scope of law enforcement action as it relates to the federal Assimilative Crimes Act, and proprietary jurisdiction federally managed land;
- provides that state and local law enforcement officers may not recognize a federal employee's exercise of law enforcement authority when the exercise is based on a state or local law or ordinance;
- authorizes state and local law enforcement to assist a federal agency or employee under specified circumstances;
- addresses federal authority on federally managed land regarding violation of a state or local law in the case of an emergency;
- prohibits a federal agency's use of state or local law enforcement correctional or communication facilities without consent of the state or local law enforcement agency;
- provides procedures, requirements, and duration regarding entering into agreements with federal employees to exercise law enforcement powers regarding state and federal law;
- allows county sheriffs to enter into agreements with federal agencies requiring fair compensation for assisting the federal agency; and
- requires that county sheriffs regularly review the duties and activities of federal agencies that have law enforcement responsibilities and are acting within the jurisdictional area of a county.

Those who need or want to know the full details of the bill had better read it carefully. I'm certain the Sheriffs' Association will be educating its members with much greater particularity. County Attorneys in counties where there has been conflict between the sheriff and agents of the listed federal land management agencies (you know who you are), should also read the bill carefully.

* The bill seeks to address the activities of employees of only the following federal agencies:

- the United States Bureau of Land Management;
- the United States Forest Service;
- the National Park Service;
- the United States Fish and Wildlife Service;
- the United States Bureau of Reclamation;
- the United States Environmental Protection Agency; and
- the United States Army Corps of Engineers.

* **IMPORTANT NOTE:** Both this bill and HB 147 specifically exclude the following federal law enforcement agents from the provisions of the bills:

- special agents of the Federal Bureau of Investigation;
- special agents of the United States Secret Service;
- special agents of the United States Department of Homeland Security, unless the employee is a customs inspector or detention removal officer;
- special agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives;

- special agents of the United States Drug Enforcement Administration;
- United States marshals, deputy marshals, or special deputy United States marshals; or
- postal inspectors of the United States Postal Inspection Service.

ENACTS: 53-13-106.1, 53-13-106.2, 53-13-106.3, 53-13-106.4, 53-13-106.6, 53-13-106.7, 53-13-106.8, 53-13-106.9 and 53-13-106.10.

COMMISSION FOR THE STEWARDSHIP OF PUBLIC LANDS

HB 151

Rep. Kevin Stratton

Creates the Commission for the Stewardship of Public Lands, consisting of three state senators and five state house members, to meet at least 8 times per year, and to have review and oversight of and make recommendations concerning the proposed transfer of the public lands. The Governor's public lands policy coordinating office shall report to the Commission periodically.

AMENDS: 63J-4-606.

REPEAL DATE: Uncodified Sections 2, 3, and 4 of the bill that create the Commission for the Stewardship of Public Lands, are repealed on November 30, 2019.

HIGHWAY SPONSORSHIP PROGRAM ACT

HB 152

Rep. John Knotwell

This bill allows the Department of Transportation to establish a sponsorship program allowing for private sponsorship of signs indicating traveler information and rest areas.

ENACTS: 72-6-401, 72-6-402 and 72-6-403.

UTAH COMMUNICATIONS AGENCY NETWORK AND UTAH 911 COMMITTEE AMENDMENTS

HB 155

Rep. Brad Dee

This bill reorganizes the state agencies responsible for the provision, administration and coordination of emergency radio and 911 services in Utah.

- It renames and organizationally relocates the communications agency network as the new Utah Communications Authority and makes changes in its duties and membership.
- It also creates the office of 911 program manager to provide staff and support to the Utah 911 Committee; that committee's duties and membership are modified.
- Lastly, the bill creates the following support entities: the radio network division, the office of statewide interoperability coordinator, and the computer-aided dispatch restricted account.

AMENDS: 26-8b-102, 59-1-403, 63A-4-205.5, 63E-1-102, 63G-2-305, 63I-1-269, 63I-4a-102,

63J-1-201, 63J-7-102, 69-2-2, 69-2-3, 69-2-4, 69-2-5 and 69-2-5.7.
ENACTS: 63H-7-301, 63H-7-308, 63H-7-309 and 63H-7-310.

EFFECTIVE DATE: Except as provided below, the bill takes effect on July 1, 2014.
Uncodified Section 46, Transition of Utah 911 Committee, takes effect on
May 13, 2014.

RAPE KIT PROCESSING AMENDMENTS

HB 157

Rep. Jennifer Seelig

This bill requires notice of certain facts in a criminal investigation be given to the victim of a sexual offense, as follows below:

If a victim of a sexual offense has made a specific request to receive the following information, the law enforcement agency investigating the sexual offense MAY notify the victim of the following:

- (ii) whether a DNA profile was obtained from rape kit or other evidence in their case;
- (iii) whether that DNA profile was entered into the Utah Combined DNA Index System;
- (iv) whether there is a match between that DNA profile and another DNA profile in the Utah Combined DNA index System, unless such notice would impede or compromise an ongoing investigation; and
- (v) that they have a right to designate a person to act as a recipient of the above information.

If a law enforcement agency investigating the sexual offense determines that DNA evidence will not be analyzed, it MUST notify the victim of that decision.

If a law enforcement agency intends to destroy rape kit evidence or crime scene evidence from a sexual assault case, it MUST, 60 days prior to the destruction, provide written notice to the victim of that intent and provide information on how to **appeal** the decision to destroy. (NOTE: No definition of “appeal” is included, so this is left for each law enforcement agency to define.)

If information is provided as directed above, and there are changes to this information, the law enforcement agency must notify the victim of those changes in a timely manner.

The duty is upon the victim to provide current name, address, telephone, or email contact information to the law enforcement agency.

AMENDS: 77-37-3

GRAZING AND TIMBER AGRICULTURAL COMMODITY ZONES IN UTAH

HB 158

Rep. Mike Noel

Identifies parcels of public land in San Juan, Kane, Garfield, Wayne, Sevier, Emery, Sanpete, Piute, Iron and Beaver Counties and establishes those areas as agricultural or timber commodity zones, setting forth policy goals to manage those lands for the enhancement of their long established grazing and timber values.

AMENDS: 63J-8-102, 63J-8-105, 63J-8-105.5, 63J-8-105.7, 63J-8-105.8 and 63J-8-105.9.

REPEALS: 63J-8-105.6.

ENACTS: 63J-8-105.8 and 63J-8-105.9.

UTAH WILDERNESS ACT

HB 160

Rep. Steve Handy

Provides a procedural framework for mapping, evaluating and proposing wilderness designations to the state legislature for the legislature's possible designations of wilderness in some of the public lands that may be transferred from the United States to the State of Utah.

ENACTS: 63L-7-101 through 63L-7-109.

INTERSTATE COMPACT ON TRANSFER OF PUBLIC LANDS

HB 164

Rep. Kevin Stratton

Provides legislative authorization for Utah to enter into an interstate compact with other western public lands states regarding the transfer of public lands from federal to state control. Establishes the substantive interstate compact itself and provides for the administration thereof. Provides the compact shall take effect when 2 or more states enter into it and Congress votes to consent to the compact pursuant to the U.S. Constitution Art I, Section 10.

ENACTS: 63L-6-105.

JUROR AND WITNESS FEES AMENDMENTS

HB 177

Rep. Keven Stratton

Beginning July 1, 2014, the administrator of the courts shall provide a report during each legislative interim to the Executive Offices and to the Criminal Justice Appropriations Subcommittee detailing expenses, trends, and efforts made to minimize expenses and maximize performance of the courts under this section.

AMENDS: 78b-1-117.

FEDERAL LAND EXCHANGE AND SALE AMENDMENTS

[HB 183](#)

Rep. Mike Noel

Sets forth the State's policy expectation that federal land management agencies shall act responsibly to expedite the exchange of federal land parcels of SITLA land parcels and move that process forward as expeditiously as possible.

AMENDS: 63J-8-104 and 63L-2-201.

JUVENILE DETENTION FACILITIES AMENDMENTS

[HB 185](#)

Rep. Eric Hutchings

This was a proposal by the Division of Juvenile Justice Services. It provides that a minor who is to be tried as an adult may be held in a juvenile detention facility until trial. The court may order the juvenile to be held in an adult facility where appropriate. There is a list of factors to be considered by the court in determining the place of pre-trial detention. That list includes the age of the minor, the nature of the offense, criminal history, impact on the juvenile facility, risk of harm to other minors, physical maturity, etc. That list is repeated in each of the three sections allowing for transfer of a minor to the adult system.

A minor who is ordered to juvenile detention remains there until released by the district court or until sentencing. A minor held in a juvenile detention facility has the same right to bail as any other criminal defendant (no choice there it's a constitutional right). If the minor reaches age 18 while being held pre-trial the minor shall be transferred within 30 days to the jail.

The court making the decision as to which facility shall hold the minor pre-trial varies with the appropriate section:

- 78a-6-701 - **direct file** provides that the district court makes that determination as the district court has exclusive jurisdiction. The minor is held in the juvenile facility until the district court decides on the proper custody - presumably at initial appearance.
- 78A-6-702 **Serious Youth Offender** provides that at the time the minor is bound over to the district court the juvenile court makes the initial determination on where the minor is to be held. Thereafter the district court may reconsider the decision on where the minor will be held.
- 78A-6-703 **Certification** also provides that at the time of the bind over to district court the juvenile court makes the initial determination on pre-trial detention. Thereafter the district court may reconsider the decision on where the minor shall be held.

There is no default position as to where the minor is to be held pending trial so the court has to make that decision at the appropriate time.

This law is a major help for those jails which do not have resources for detaining minor offenders with sight and sound separation from adult offenders as required by P.R.E.A. (Prison Rape Elimination Act).

AMENDS: 78A-6-701, 78A-6-702 and 78A-6-703.

BREATHALYZER AMENDMENTS

HB 190

Rep. Greg Hughes

Alcohol retail licensees of the State are reportedly making available various types of breath testing devices for their customers. Not surprisingly some of these devices are better than others. Representative Hughes responded to requests from members of the industry producing these devices that there be some sort of regulation. As a result, licensees who make these items available may use devices that are based on electro mechanical fuel sensor technology or single use disposable breath testers which are cleared with the USDA as “a Class 1 medical device with at least 99.18% accuracy and having a detection cut off of 0.08 relative percent blood alcohol concentration”.

The whole concept of breathalyzers in bars raised a concern with the USAAV DUI Committee that this can easily turn into a drinking game where persons in the bar would drink until they were just under the .08 standard and then think they are safe to drive home.

We approached Representative Hughes and asked that as long as he was legislating on the topic that we have a notice which states “the National Transportation Safety Board has found that crash risk is consistently and significantly elevated by the time an individual reaches a blood alcohol content of 0.05”. He was glad to oblige.

DABC is given the authority to require licensees to remove any non-compliant breathalyzers.

The term “breathalyzer” seems to have become a generic term in the industry.

ENACTS: 32B-5-311.

INITIATIVE AND REFERENDUM PETITION AMENDMENTS

HB 192

Rep. Jon Stanard

Petitions for initiatives or referendums must now contain language on the signature page that the signer has read and understands the law proposed or the law to be overturned.

AMENDS: 20A-7-203, 20A-7-303, 20A-7-503 and 20A-7-603.

PUBLIC SAFETY RETIREMENT CONVERSION WINDOW

HB 194

Rep. Lee Perry

This bill modifies the Utah State Retirement and Insurance Benefit Act by creating a conversion window between the Public Safety Contributory Retirement System and the Public Safety Noncontributory Retirement System. The conversion window will be in effect from July 1, 2014, through December 31, 2014. While in effect, the window makes a person converting to the noncontributory system all of the rights, limitations, terms, and conditions of the Public Safety Noncontributory Retirement Act.

AMENDS: 49-15-204.

UNLAWFUL REMOVAL OR VANDALISM OF CAMPAIGN SIGNS

HB 200

Rep. Eric Hutchings

It will now be a class B misdemeanor to knowingly remove, alter, deface, or otherwise vandalize a sign that:

- (a) advocates the election or defeat of a candidate for public office; or
- (b) advocates the approval or defeat of a ballot proposition.

As one would expect, the bill exempts:

- (a) the candidate or an agent of the candidate;
- (b) the person who placed the sign or who directed the placement of the sign or an agent of either;
- (c) the owner of the property on which the sign is placed or the owner's agent; and
- (d) public officials who remove the sign in accordance with an official duty.

ENACTS: 20A-17-101 and 20A-17-102.

EXTENSION OF SALES AND USE TAX EXEMPTION

HB 209

Rep. Ryan Wilcox

This bill extends the sales and use tax exemption indefinitely for replacement parts used in the equipment of steel mills as found in Section 59-12-104(29). Local entities will lose \$92,000 in sales and use tax annually.

AMENDS: 59-12-104.

SUBSTANCE ABUSE AMENDMENTS

HB 211

Rep. Michael Kennedy

This legislation provides authority for the Division of Substance Abuse and Mental Health within the Department of Human Services to license businesses defined as “recovery residences.” The definition included in the legislation provides the authority over homes that are run as a business, provide supervised living, and provide therapeutic intervention either at the home or off-site. It also directs the Division to provide materials to the residences that outline effective treatment and intervention practices. Finally, it creates a committee within the Utah Substance Abuse Advisory Council to study issues relating to recovery residences.

This legislation arose out of long discussions on how local governments can exert some control over group living homes which house people in recovery from substance use. The bill is narrowly drafted and seeks to avoid any conflict with Federal fair housing law by focusing on group living situations that are in fact businesses. This legislation is a step toward some control of these businesses but it cannot be seen as any limitation on housing choices for recovering addicts. There is nothing here that challenges Fair Housing Act law and attorneys should try to ensure elected officials do not try to use the authority more broadly than allowed by the language of the legislation.

AMENDS: 62A-2-101, 62A-2-108.2 and 62A-15-103.

REPEAL DATE: Uncodified Section 4 of the bill, which creates the Recovery Residences and Substance Abuse Treatment Committee, and Uncodified Section 5, Duties and Interim report, are repealed on November 30, 2014.

DNA COLLECTION AMENDMENTS

HB 212

Rep. Steve Eliason

This bill provides that law enforcement agencies MAY, beginning May 3, 2014 through December 31, 2014, collect DNA samples at the time of booking from any person arrested for any felony offense. On and after January 1, 2015, law enforcement agencies MUST collect DNA samples at the time of booking from any person arrested for any felony offense.

AMENDS: 53-10-403, 53-10-404 and 53-10-404.5.

CRIMINAL PENALTIES FOR SEXUAL CONTACT WITH A STUDENT

HB 213

Rep. LaVar Christensen

This bill expands the term "position of special trust" in two different statutes to include adult employees and volunteers at public and private schools.

The Aggravated Sexual Abuse of a Child statute, 76-5-404.1, now includes in the definition of persons in a position of special trust, "a teacher or any other person employed by or volunteering at a public or private elementary school or secondary school, and who is 18 years of age or older."

The sexual abuse of a minor statute, 76-5-401.1, now makes it a crime for any person who is "a teacher or any other person employed by or volunteering at a public or private elementary school or secondary school, and who is 18 years of age or older" to have sexual contact with a minor as defined in that statute.

The bill also provides that for persons in this position of special trust category, these crimes are grounds for disciplinary action against the educator, including revocation of the educator's license. 76-5-415.

AMENDS: 76-5-309, 76-5-401.1, 76-5-401.2, 76-5-404.1 and 76-5-406.

ENACTS: 76-5-415.

SERVICE ANIMALS

[HB 217](#)

Rep. Ryan Wilcox

Counties and cities are required to increase their respective limits on the number of domestic animals that can be kept in order to accommodate “a service animal, a retired service animal, or both.”

AMENDS: 10-8-65.

LAND USE AMENDMENT

[HB 220](#)

Rep. Gage Froerer

In addition to clarifying that a legislative body can be the land use authority, this bill requires a substantive review of an application for which fees have been paid, and that is complete. The most significant change is that before acting upon a petition to vacate, alter or amend a subdivision, notice must be sent to each affected entity that provides service to the portion of the subdivision to be vacated, altered, or amended. The notice must be made at least 10 calendar days before action can be taken on the petition. Finally, it clarifies that any such plat, when filed, will supersede and replace anything contrary in the prior filings.

AMENDS: 10-9a-103, 10-9a-509, 10-9a-608, 10-9a-609, 17-27a-103, 17-27a-508, 17-27a-608 and 17-27a-609.

PRIMARY LAW ENFORCEMENT DUTIES FOR SHERIFFS

[HB 225](#)

Rep. Paul Ray

Short and sweet. The entire substantive portion of the bill reads:
“**17-22-31. Sheriff – Primary law enforcement authority.**
The sheriff is the primary law enforcement authority of state law on federal land except as otherwise assigned by law to the authority of a state or municipal law enforcement agency.”

ENACTS: 17-22-31.

LOCAL REFERENDUM REQUIREMENTS AMENDMENTS

[HB 238](#)

Rep. Kraig Powell

This bill addresses a situation in which a county or city imposes a tax or payment obligation, but it does not affect the entire jurisdiction. This bill refers to the affected area as a “subjurisdiction.” Those subjurisdiction residents then have a proportionally reduced requirement in obtaining signatures for a referendum to challenge the legislation imposing the tax or payment in their subjurisdiction.

AMENDS: 20A-7-601.

CRIME VICTIM RESTITUTION AMENDMENTS

HB 248

Rep. Mike McKell

Victims in criminal cases will now be allowed to designate a person to represent them, with the approval of the court, in pursuing a claim for restitution.

AMENDS: 77-38-9.

HUMAN TRAFFICKING VICTIM AMENDMENTS

HB 254

Rep. Jennifer Seelig

This bill provides services for children and minors who are victims of human trafficking, and also provides services and limited immunity for children and minors who are engaged in prostitution or sexual solicitation.

The Division of Child and Family Services (DCFS) must provide services to children and minors who are victims of human trafficking or smuggling, even if they have engaged in prostitution or sexual solicitation crimes.

The bill also provides some duties for police officers who encounter children or minors who may have committed a prostitution crime. Upon encountering a child or minor engaged in prostitution or sexual solicitation, a law enforcement officer shall:

- (i) conduct an investigation;
- (ii) refer the child or minor to DCFS;
- (iii) if an arrest is made, bring the child or minor to a receiving center, if available; and
- (iv) contact the child or minor's parent or guardian, if practicable.

The first time a child or minor is referred to DCFS for services under these circumstances, the child may be the subject of dependency proceedings but not delinquency proceedings in juvenile court. If the child or minor has previously received services from DCFS under these circumstances, delinquency proceedings may be initiated against the child or minor.

The bill also provides civil remedies for victims of human trafficking against the perpetrator.

AMENDS: 62A-4a-105 and 76-10-1302.

ENACTS: 77-38-15.

AGGRAVATED SEXUAL ABUSE OF A CHILD AMENDMENTS

HB 257

Rep. Brad Wilson

Last May the Utah Supreme Court held that in order to prove that a child sex abuse defendant is in a position of special trust in relation to a victim under 76-5-404.1(4)(h), the state must prove that the defendant occupied a "position of authority" over the victim and that the position gave the

defendant the ability to “exercise undo influence” over the victim, even if the defendant falls within one of the statutorily enumerated positions *State v. Watkins* , 2013UT 28. Prosecutors and judges had previously assumed that being a member of one of the enumerated categories made one per-se in a “position of special trust”. The District Court and Court of Appeals had also read the statute that way. The Supreme Court’s holding was not without some justification as it was based on the fact that the statutory language was ambiguous.

This SWAP initiated bill fixes that problem. The section in question 76-5-404.1, Sexual Abuse of a Child, is reconfigured with “position of special trust” placed in the definitional subsection. Sub-section (1)(c) states “ ‘position of special trust’ means:” The list of positions is then included. At the end of the list is included Subsection (1)(c)(xxii) which lists “any person in a position of authority, *other than those persons listed in sub-sections (1)(c)(i) through (xxii)*, which enables the person to exercise undo influence over the child.”

It should now be abundantly clear that occupying one of those positions with respect to the victim makes one per-se in a “position of special trust”. Ample references were made to the *Watkins* case specifically enumerating the purpose of the legislature to clarify that these are per-se positions of special trust. Cross references were also amended to reflect these changes in 76-5-309 Human Trafficking and 76-5-406 Sexual Offenses Against the Victim Without Consent of Victim.

Pursuant to the consent section, occupying a position of special trust negates consent subjecting a person to liability for a charge of rape etc. At our request the sponsor asked to limit action in this bill to clarifying the per-se positions of special trust. In the house committee hearing however, an additional Subsection (xvi) was added to include “a sibling or a step-sibling who is an adult”. This was after some compelling testimony given by a now adult victim.

This list was also expanded in a separate bill sponsored by Representative LaVar Christensen (see HB 213).

AMENDS: 76-5-309, 76-5-404.1 and 76-5-406.

LOCAL GOVERNING BODY VOTING AMENDMENTS

HB 262

Rep. Kraig Powell

This bill requires that a municipal legislative body pass all votes by a majority of all voting members on the legislative body, not a majority of a quorum present.

AMENDS: 10-3-507.

DISABLED PARKING FINE AMENDMENTS

HB 264

Rep. Jennifer Seelig

Uncle Harry is disabled and has been issued a license plate or a temporary window placard which allows him to park in designated disabled parking spots. One day his car breaks down and

is getting repaired so he borrows his nephew's car to go to the store. Nephew has neither a disability license plate or a placard and Harry forgot to take his placard from his car. Harry parks in the disabled spot and gets a ticket, the minimum fine for which is \$125. (See 41-1a-414 and 41-1a-1306.)

This bill provides that the judge may waive up to \$100 of the fine upon proof that Harry had been issued a disability license plate or a temporary disability placard.

My question: why would the judge not be allowed to dismiss the whole thing and assess no fine upon a showing by Harry that he had been issued the requisite license plate or placard?

AMENDS: 41-1a-1306.

DANGEROUS WEAPONS AMENDMENTS

HB 268

Rep. Brian Greene

The initial purpose of this bill was to allow restricted persons to possess archery equipment including cross bows for target shooting and hunting. The sponsor also expanded the bill to make sweeping changes in the definition of a "dangerous weapon". The initially proposed changes were so sweeping that it would have made it virtually impossible for us to prosecute a restricted person for possession a dangerous weapon other than a firearm. SWAP and other organizations opposed the bill and negotiated many changes with the sponsor. Although we never did reach a compromised bill which we could support the changes did mitigate the problems and did accurately reflected the collective will of the legislature.

The definition of "dangerous weapon" in 76-10-501 was modified to include a firearm as a per-se dangerous weapon. The language regarding factors to be used in determining whether an object other than a firearm is a dangerous weapon were modified considerably and warrant careful review in screening or prosecuting a case. The specific reference to a knife was deleted. The factors include location and circumstances in which the object was used or possessed, the primary purpose for which the object was made, etc. Also added to that list was **"whether the manner in which the object is used or possessed constitutes a potential imminent threat to public safety..."**. That consideration has probably always been a defacto issue for the finder of fact but it is now in print and something with which we will have to deal.

76-10-503 Restrictions on Possession Purchase is modified to require that a category 2 restricted person "intentionally or knowingly" purchases transfers possesses a dangerous weapon other than a firearm. That is not a particularly big deal as transfer by a category I person already contained the mens rea of "intentionally or knowingly". Interestingly, 76-10-509.7 Parent or Guarding Knowing of Minor's Possession was also amended to require reasonable efforts to remove the "dangerous weapon" in addition to the current requirement to remove a firearm from the minors possession.

76-10-512 was the original heart of the bill and states "(2) it is not a violation of sub-section 76-10-503(2) or (3) for a restricted person defined in sub-section 76-10-503(1) to own, possess, or

have under the person's custody or control archery equipment, including cross bows, for the purpose of lawful hunting and lawful target shooting.”

We were also able to get the sponsor to include the following language:
“(3) notwithstanding sub-section (2), the possession of archery equipment, including cross bows, by a restricted person defined in sub-section 76-10-503(1) may be prohibited by;
 (a) a court, as a condition of pre-trial release or probation: or
 (b) the Board of Pardons and Parole, as a condition of parole.”

AMENDS: 76-10-501, 76-10-503, 76-10-509.7 and 76-10-512.

PEACE OFFICER CERTIFICATES

[HB 270](#)

Rep. Richard Greenwood

This bill clarifies that a peace officer certification becomes inactive if a peace officer has not been actively engaged in performing the duties as a certified and sworn peace officer for 18 consecutive months; AND

It provides that a peace officer certification be designated as lapsed if a peace officer has not been actively engaged in performing the duties as a certified and sworn peace officer for four continuous years.

AMENDS: 53-6-208 and 53-6-211.5.

MUNICIPAL ELECTION AMENDMENTS

[HB 272](#)

Rep. John Knotwell

This bill requires the city recorder or town clerk to be open 8 a.m. to 5 p.m. from June 1 through June 7 during the years in which people can file for municipal elected offices. The offices don't need to be open if it is a Saturday, Sunday, or state holiday.

AMENDS: 10-3-301 and 20A-9-203.

PROPERTY TAX RESIDENTIAL EXEMPTION AMENDMENTS

[HB 273](#)

Rep. Lowry Snow

This bill allows part-year residential property to qualify for the residential exemption if it was acquired after January 1, of the tax year and the property is occupied as a primary residence for more than 183 days. **Taxpayers are still limited to one residential exemption per household.*** To qualify for a part-year residential exemption, the owner must file an application no later than November 30 in the year the exemption applies. The board of equalization may charge a fee of \$50.00 if it is filed after May 1 in the year the exemption applies. The residential exemption should

apply only in rare circumstances. It may apply where a taxpayer acquires property during the tax year that previously had not qualified for the primary exemption and uses that as his primary residence. In cases where a taxpayer is changing his primary residence from one property to another property in Utah, Assessors need to make sure that the former home, if retained as a second home, is no longer allowed an exemption.

*Because of administrative reasons, a taxpayer who makes a change in his primary residence during the tax year may receive the residential exemption on two properties. However, this should only occur in the year of change.

AMENDS: 17-41-101, 59-2-102, 59-2-103, 59-2-103.5, 59-2-804 and 59-7-302.

EFFECTIVE DATE: January 1, 2015.

DISORDERLY CONDUCTS AMENDMENTS

HB 276

Rep. Curtis Oda

Amends **76-9-102. Disorderly conduct.**

(3) *The mere carrying or possession of a holstered or encased firearm, whether visible or concealed, without additional behavior or circumstances that would cause a reasonable person to believe the holstered or encased firearm was carried or possessed with criminal intent, does not constitute a violation of this section. Nothing in this Subsection (3) may limit or prohibit a law enforcement officer from approaching or engaging any person in a voluntary conversation.*

AMENDS: 76-9-102

AMENDMENTS TO ELECTION LAWS

HB 282

Rep. Kraig Powell

This bill makes changes in the qualifications of those who may be appointed to serve as counting judges, receiving judges, and poll workers in elections.

Receiving Judges:

For regular general elections, a “receiving judge” who is 16 or 17 years of age may be appointed, with the condition that two other registered voters serve in the same capacity, at least one of whom must be 21 years of age or older.

For regular primary elections and the Western States Presidential Primary, a receiving judge who is 16 or 17 year old may be appointed if at least one other registered voter 21 years or older is also appointed in the same capacity.

Counting Judges:

In regular general elections, “counting judges” must be registered voters.

For regular primary elections and the Western States Primary, a person may be appointed as a counting judge if he/she is 17 years of age and will be 18 by the date of the next regular general election, and provided at least one other appointee is a registered voter.

Poll Workers Generally:

No poll workers may be appointed in a precinct who are the parents, siblings, spouses, children or in-laws of any candidate whose name appears on the ballot in that precinct.

AMENDS: 20A-1-102, 20A-5-601 and 20A-5-602.

NONPROFIT ENTITY RECEIPT OF GOVERNMENT MONEY

HB 283

Rep. Ronda Rudd Menlove

This bill applies to state entities—not local government entities. The bill provides that a state entity may not grant state money to a nonprofit entity (even a pass-through funding grant) unless the nonprofit entity:

- (a) enters into a written agreement with the state entity; and
- (b) establishes certain bylaws and procedures for the oversight and management of the state money.

The written agreement must require the nonprofit entity to provide the state entity with an itemized report, at least annually, detailing the manner in which the state money was expended. The written agreement must also disclose;

- (i) whether the nonprofit entity has met or exceeded the threshold expenditure amount that triggers the requirement that the nonprofit entity's accounts be audited annually by a competent certified public accountant; and
- (ii) whether the nonprofit entity anticipates it will meet or exceed this threshold amount in the fiscal year in which the grant is issued.

If, during the time in which the nonprofit entity holds or expends state money, a nonprofit entity fails to comply with the written agreement, bylaws, or procedures required to obtain the grant of state money, the state entity that provided the grant of state money may require the nonprofit entity to return to the state entity the amount of state money expended in violation of the written agreement, bylaws, or procedures.

AMENDS: 51-2a-102.

ENACTS: 51-2a-204, 69J-9-101, 69J-9-102, 69J-9-201 and 69J-9-202.

CRIMINAL CODE - GENERAL PROVISIONS (PRESUMPTION OF INNOCENCE AMENDMENT)

HB 290

Rep. Carol Spackman Moss

This bill amends 76-1-501 to add the conjunctive “and” to the definition of “element of the offense.” The section now reads in full:

- (1) A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In the absence of this proof, the defendant shall be acquitted.
- (2) As used in this part the words "element of the offense" mean:
 - (a) the conduct, attendant circumstances, or results of conduct proscribed, prohibited, or forbidden in the definition of the offense; **and**
 - (b) the culpable mental state required.
- (3) The existence of jurisdiction and venue are not elements of the offense but shall be established by a preponderance of the evidence.

AMENDS: 76-1-501.

EFFECTIVE DATE: March 25, 2014, upon being signed by the Governor.

STATE LABORATORY DRUG TESTING ACCOUNT AMENDMENTS

HB 291

Rep. Ronda Menlove

This bill:

- increases the administrative fee for license reinstatement after an alcohol-related or drug-related offense from \$170 to \$230;
- increases by a little more than double the amount deposited into the State Laboratory Drug Testing Account from that increased alcohol-related DL reinstatement fee.

Maybe the Crime Lab and/or the Tox Lab will be able to hire another technician or two.

AMENDS: 53-3-105 and 53-3-106.

EFFECTIVE DATE: July 1, 2014.

WEAPONS LAW EXEMPTIONS

HB 295

Rep. Richard Greenwood

This bill addresses several issues regarding exemptions from weapons laws. First it addresses a problem raised by P.O.S.T. regarding the exemption of peace officers from the brandishing statute when the officer is not performing official duties but is rather engaged in a domestic violence dispute. The second issue is a quirk in the exemption section which prevented state prosecution of a restricted person who was traveling through the state and had a firearm locked in a case. This bill also provided an opportunity to deal with the issue of what definition of "dangerous weapon" should be applied to brandishing.

76-10-523 Persons Exempt from Weapon Laws was modified to not apply the overall exemption to using a dangerous weapon in a fight or quarrel, drive by shooting and felony drive by

shooting. Exemptions for peace officers and others listed are now dealt with in each of those sections individually.

The obviously necessary exemption for peace officers and others to 76-10-506 Using a Dangerous Weapon in a Fight or Quarrel is dealt with in that section with the following language: “this section does not apply to a person listed in sub-sections 76-10-523(1)(a) through (e) in performance of the person’s duties”.

Similar language is included in the drive by shooting and felony drive by shooting sections 76-10-508 and 76-10-508.1 respectively.

76-10-523 Persons Exempt from Weapon Laws has a new sub-section (3) which applies to non residents traveling in or through the state with a weapon which is unloaded and securely encased. That new sub-section clarifies that in addition to brandishing and drive by the exemption does not apply to a restricted person as defined in 76-10-503.

While we were dealing with the brandishing section 76-10-506, it was a good opportunity to deal with the definition of dangerous weapon as applied to that section. It has been a perennial problem for prosecutors and courts to have to deal with somewhat absurd jury instructions when the defense asks for a lesser included offense instruction in the trial of an aggravated assault where a non firearm weapon is used. It has been somewhat ridiculous to have to talk about the many wonderful alternative uses of a knife or other object when that object has actually been displayed in a threatening manner. Our original effort was to simply refer to the general definition of dangerous weapon in the criminal code so that it would be the same as the definition used for the aggravated assault charge. That, however did not wash well with some influential advocacy groups who pointed out with some justification that the general definition also contained elements irrelevant to a brandishing charge.

As a result we came up with a new definition of dangerous weapon which applies only to section 76-10-506.

It reads as follows:

“(a) ‘dangerous weapon’ means an item that in the manner of its use or intended use is capable of causing death or serious bodily injury. The following factors shall be used in determining whether an item, object or thing is a dangerous weapon:

- (i) the character of the instrument, object, or thing;
- (ii) the character of the wound produced, if any; and
- (iii) the manner in which the instrument, object, or thing was exhibited or used.”

Although we are still stuck with a separate jury instruction for the lesser included brandishing charge at least it is a relatively simple definition.

AMENDS: 76-10-506, 76-10-508, 76-10-508.1 and 76-10-523

CONCEALED WEAPON PERMIT EXEMPTIONS AMENDMENTS

[HB 296](#)

Rep. Richard Greenwood

This bill actually has nothing to do with civilian concealed weapon permits as it deals only with LEOJ qualification issues.

Current law requires the individual agencies- Board of Pardons, Judicial Council or prosecution agencies - to establish requirements for the annual re-qualification. This bill requires the Commissioner of Public Safety to establish uniform re-qualification requirements for the whole state. If the agencies desire to establish additional requirements for their employees they may do so. The need for this change was obvious because in the decades the LEOJ program has existed we are not aware of any agencies which have officially adopted requirements different from those in the original model requirements which we distributed years ago. Unfortunately many agencies have not adopted any re-qualification requirements so the requirements listed on the green BCI standard form have become the de facto standard. The law will now be conformed to standard practice.

Another significant oversight in the original statute was to specifically allow the Bureau to revoke a LEOJ permit under the same circumstances as it would be able to revoke a concealed firearm permit. This has arguably been within BCI's authority all along as one had to be qualified for a concealed firearm permit in order to hold a LEOJ certificate but it is far better to spell this out. Fortunately this has not been an issue with which we have had to deal during the history of the LEOJ program (yea for us!).

AMENDS: 53-5-711.

LAW ENFORCEMENT VOLUNTEERS

[HB 304](#)

Rep. Richard Greenwood

This is an amendment to UCA 67-20-4, which has provided that no agency may accept the services of a volunteer unless approved by *both* the agency's executive officer *and* the personnel office with jurisdiction over the agency. This amendment allows the sheriff alone to approve a volunteer to assist in a search and rescue operation.

AMENDS: 67-20-4.

MUNICIPAL ORDINANCE MINIMUM FINE AMENDMENTS

[HB 308](#)

Rep. Craig Hall

This amendment must make a difference to someone.

10-3-703. Criminal penalties for violation of ordinance -- Civil penalties prohibited -- Exceptions.

(1) The governing body of each municipality may impose a [~~minimum~~] criminal penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine

under Section 76-3-301 or by a term of imprisonment up to six months, or by both the fine and term of imprisonment.

- (2) (a) Except as provided in Subsection (2)(b), the governing body may prescribe a [minimum] civil penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine under Section 76-3-301.
- (b) A municipality may not impose a civil penalty and adjudication for the violation of a municipal moving traffic ordinance.

AMENDS: 10-3-703.

VEHICLE IMMOBILIZATION AND IMPOUND AMENDMENTS

HB 314

Rep. R. Curt Webb

This bill provides that the owner of an impounded vehicle may not be charged a fee by an impound yard or by a county or municipal legislative body for the storage of an impounded vehicle, vessel, or outboard motor if:

- (1) it is being held as evidence; and
- (2) it is not being released to the registered owner, lien holder, or owner's agent even if the registered owner, lien holder, or the owner's agent has satisfied all the release requirements in Section 41-6a-1406(6).

This bill also provides that a vehicle immobilizer may not charge a fee for any period in which the vehicle has been towed and custody of the vehicle has been transferred to a vehicle impound yard.

AMENDS: 41-6a-1406, 41-6a-1409, 72-9-603 and 72-9-604.

JUDGMENT LIEN AMENDMENTS

HB 315

Rep. Curt Webb

This bill requires a separate sheet be filed with a judgment lien that contains: (i) the correct name and last-known address of each judgment debtor and the address at which each judgment debtor received service of process; (ii) the name and address of the judgment creditor; (iii) the amount of the judgment as filed in the Registry of Judgments; (iv) if known, the judgment debtor's Social Security number, date of birth, and driver's license number if a natural person; and (v) whether or not a stay of enforcement has been ordered by the court and the date the stay expires.

PRACTICE NOTE: It is strongly recommended that you review state and federal law before you record a document containing the debtor's social security number and driver's license number. It may be criminal violation, unless such numbers are properly redacted.

AMENDS: 57-3-106, 78A-7-105, 78B-5-201 and 78B-5-202.

BAIL BONDSMEN AMENDMENTS

HB 334

Rep. Edward Redd

Amends the **Licensure -- Bail recovery apprentices**, statute so that an apprentice can wear clothing with lettering ‘that clearly identifies the licensee as a bail enforcement recovery agent.’

AMENDS: 53-11-112.

COUNTY BUDGET AMENDMENTS

HB 339

Rep. Jennifer Seelig

This bill permits a county to make donations to non-profit and to for-profit entities, upon meeting certain standards and following required procedures. To make a donation to a for-profit entity, a county must study the proposal; may consider tangible and intangible benefits related to the health, safety and well-being of county residents; may establish the criteria to evaluate the proposal; shall determine the need for county participation; must prepare a written report; must publish the report and provide notice of a public hearing, including on the state website, to be held to consider the proposal; and finally, must make a decision, taking into consideration the report and the public response. The donation decision may be appealed to district court.

AMENDS: 17-50-303.

LOCAL DISTRICT BOUNDARY ADJUSTMENTS

HB 340

Rep. Jeremy Peterson

This bill amends provisions regarding the process by which a local district and a municipality may adjust their mutual boundaries, including within the expansion area defined by the municipality’s annexation plan.

AMENDS: 17B-1-503.

INCORPORATION ELECTION AMENDMENTS

HB 344

Rep. Jon Cox

This bill amends the municipal incorporation election process to permit an incorporation election proposition to be on the ballot in both the November general and June primary election days and in both even and odd numbered years, at the discretion of the county legislative body, but no sooner than 65 days after the incorporation petition is certified. The bill deletes a provision in the election code that permitted a government entity to provide an unbiased and factual voter information pamphlet regarding an election proposition.

AMENDS: 10-2-111, 10-2-127, 20A-1-203, 20A-11-101 and 20A-11-1203.

CANAL SAFETY AMENDMENTS

HB 370

Rep. Johnny Anderson

Requires the State Engineer to inventory and maintain a list of all “open, human-made water conveyance systems” in the state that carry at least five cubic feet of water per second. The list shall be completed by July 1, 2017, and shall include certain information regarding each system, its owner and whether a management plan exists for the system. Imposes a duty on the owners to inform the State Engineer if information on the list changes.

The bill also permits the State Engineer to contract with local conservation districts to inventory and maintain the list, and to assist canal owners in preparing and adopting management plans.

AMENDS: 73-5-7 and 73-10-33.

FIREARM TRANSFER CERTIFICATION AMENDMENTS

HB 373

Rep. Ryan Wilcox

First, a couple of definitions.

(1) As used in this section:

(a) "Certification" means the participation and assent of the chief law enforcement officer necessary under federal law for the approval of the application to transfer or make a firearm.

(b) "Chief law enforcement officer" means any official the Bureau of Alcohol, Tobacco, Firearms and Explosives, or any successor agency, identifies by regulation or otherwise as eligible to provide any required certification for the making or transfer of a firearm. (It is unclear to the writer of this summary whether this definition includes state and local law enforcement officers, but presumably it does.)

The bill then goes on to provide that:

(3) Upon receiving a federal firearm transfer form a chief law enforcement officer or the chief law enforcement officer's designee shall provide certification if the applicant:

(a) is not prohibited by law from receiving or possessing the firearm; or

(b) is not the subject of a proceeding that could result in the applicant being prohibited by law from receiving or possessing the firearm.

(4) The chief law enforcement officer has 15 calendar days in which to either sign the transfer form and return it to the applicant or provide to the applicant the reasons for denial of the transfer.

(5) Chief law enforcement officers and their employees who act in good faith when acting within the scope of their duties are immune from liability arising from any act or omission in making a certification as required by this section. Any action taken against a chief law enforcement officer or an employee shall be in accordance with Title 63G, Chapter 7, Governmental Immunity Act of Utah.

Subparagraph (2) says that a chief law enforcement officer may not make a certification under this statute that he knows to be untrue. (Duh!) It also provides that the officer may not refuse

to provide certification based on a generalized (personal) *objection to private persons or entities making, possessing, or receiving firearms or any certain type of firearm, the possession of which is not prohibited by law.*

ENACTS: 53-5a-104

TRANSPARENCY OF BALLOT PROPOSITIONS

HB 379

Rep. Ryan Wilcox

This bill provides for submission and publication of arguments both for and against any ballot proposition. The governing body of a taxing entity must submit an argument (500 words or less) for the ballot proposition. Any eligible voter may submit an argument against the proposition. Each side is then provided an opportunity to submit a rebuttal (250 words or less). Once all arguments are submitted, they must be posted on the Statewide Electronic Voter Information Website at least 30 days prior to “the determination date.” Arguments must also be posted on the taxing entity’s website and in any newsletter or periodical the entity publishes.

The taxing entity must also hold a public meeting between four and fourteen days before the determination date. Equal time is required to allow arguments for and against the proposition. A recording of the meeting must be made available on the taxing entity’s website or provided to members of the public.

One touchy issue: If more than one eligible voter submits an argument against the proposition, the election officer must designate only one who is to provide the published submission.

AMENDS: 11-14-201.

ENACTS: 59-1-1601, 59-1-1602, 59-1-1603, 59-1-1604 and 59-1-1605.

LOCAL GOVERNMENT INTERFUND LOANS

HB 381

Rep. John Knotwell

This bill impacts the fiscal operations of cities, counties and districts. Concern has been expressed by the State Auditor’s Office over loans between government funds that are not paid back. This bill requires that certain interfund loan be in writing, and approved by ordinance or resolution in a public meeting. It places restrictions on the interest rates and the length of the loan. Importantly, the bill does not apply to interfund loans from the general fund to any other funds, nor does it apply to short-term advances from the entity’s cash and investment pool to individual funds that are repaid by the end of the fiscal year.

The bill coordinates with S.B. 18, Local Government General Fund Amendments, by providing technical amendments.

AMENDS: 10-5-120, 10-6-106, 10-6-132, 17-36-3, 17-36-30, 17B-1-601 and 17B-1-626.

ENACTS: 10-5-102.5.

UTAH CODE SECTIONS

AFFECTED BY COORDINATION CLAUSE: 10-5-102.5, 10-6-106 and 17-36-3.

LIMITED PURPOSE LOCAL GOVERNMENT ENTITIES

[HB 382](#)

Rep. Brad Dee

This bill amends the process to appoint or elect improvement district trustees and allows a county legislative body to appoint up to 3 of its members as trustees under certain conditions. It also classifies a special service district as a political subdivision of the state.

AMENDS: 17B-2a-404 and 17D-1-10.

UNLAWFUL ACTIVITIES AMENDMENTS

[HB 390](#)

Rep. Rebecca Chavez-Houck

There were a series of bills this year which address wrongful activities done at the legislature itself, or for failure to comply with legislative orders, likely stemming from some things the legislature thought were hard to swallow. This is one of those bills.

36-12-9.5, Obstructing a Legislative Proceeding. This new law provides that a person is guilty of a Class A misdemeanor if the person:

with intent to hinder, delay, or prevent a legislative proceeding:

- (a) provides a person with a weapon;*
- (b) prevents a person, by force, intimidation, or deception, from performing any act that might aid the legislative proceeding;*
- (c) alters, destroys, conceals, or removes any item or other thing;*
- (d) makes, presents, or uses an item, document, or thing known by the person to be false;*
- (e) makes a false material statement, **not under oath**, to:*
 - (i) the Legislature, or a house, committee, subcommittee, or task force of the Legislature; or*
 - (ii) an employee or independent contractor of an entity described in Subsection (2)(e)(I);*
- (f) harbors or conceals a person;*
- (g) provides a person with transportation, disguise, or other means of avoiding discovery or service of process;*
- (h) warns any person of impending discovery or service of process;*
- (i) conceals an item, information, document, or thing that is not privileged after a legislative subpoena is issued for the item, information, document, or thing; or*
- (j) provides false information regarding a witness or a material aspect of the legislative proceeding.*

The bill then clarifies that a violation of this Section 36-12-9.5 is different from a violation of False or Inconsistent Statements in Section 76-8-503 (false statement under oath in an official proceeding), which is only a Class B misdemeanor.

Finally, the bill adds the crimes of tampering with a witness, at 76-8-510.5, and Falsification or Alteration of a Government Record -- if the record is a required lobbyist disclosure record -- to the list of crimes for which a Pattern of Unlawful Activity (RICO) may be charged.

ENACTS: 36-12-9.5.

AMENDS: 76-8-501, 76-8-503, 76-8-510.5 and 76-10-1602.

DELEGATE RESPONSIBILITY AMENDMENTS

HB 392

Rep. Kraig Powell

While this bill creates a new crime that will likely never be charged, it is a fun one to think about. First, the crime would only potentially apply in the event that an Article V (of the US Constitution) Convention is being held somewhere to propose an amendment to the US Constitution. In that event, the Utah Legislature would elect Delegates to attend the convention.

But how do you ensure that the delegates do what they are supposed to do while at the Convention? First, make them swear to this oath (this is the actual language from the law):

"I do solemnly swear (or affirm) that to the best of my abilities, I will, as a delegate to an Article V convention, uphold the Constitution and laws of the United States of America and of the State of Utah, and that I will act at all times in accordance with the Article V application and the legislative instructions given to me as a delegate. I will not act in a manner that supports or approves the proposing of an unauthorized amendment or change to the United States Constitution by the convention."

So, what happens if a delegate elected by the legislature disobeys the legislature?
(6) *A delegate who violates this section is guilty of a third degree felony.* (You go to prison - unless the new constitution you pass exempts you from any punishment for your actions as a delegate.)

ENACTS: 20A-17-101.

CAMPAIGN FINANCE REVISIONS

HB 394

Rep. James Dunnigan

This bill beefs up campaign finance disclosure requirements for candidates seeking “public office,” i.e., governor, lieutenant governor, state auditor, state treasurer, attorney general, any office in the state house or senate, and any state or local school board. The law does not cover county or municipal elections.

The bill requires disclosure of the ultimate or “actual source” of a campaign contribution or expenditure rather than a “transactional intermediary” such as a credit card company, financial institution, etc. An identical requirement applies to judicial elections finance reporting.

Disclosure requirements are renumbered and clarified, with new requirements that a disclosure be filed anytime an affected officeholder changes employment, and also be updated annually to include the identity of *all* employers and business entities the officeholder has been employed by or owned an interest in during the prior year. Similar information must also be provided on spouses and other adults who reside in the officeholder’s household. Violations of the law are made a class B misdemeanor punishable by imposition of a \$100 fine.

AMENDS: 20A-11-101, 20A-11-1601, 20A-11-1602, 20A-11-1603 and 20A-11-1604.

ENACTS: 20A-11-101.3, 20A-11-101.5, 20A-11-1605 and 20A-12-301.5.

EFFECTIVE DATE: March 13, 2014, upon being signed by the Governor.

TRUANCY AMENDMENTS

HB 399

Rep. Francis Gibson

A local school board or charter school governing board may not issue an habitual truant citation to a school-age minor if the minor: a) has at least a 3.5 cumulative grade point average and b) is at least 16 years of age.

AMENDS: 53A-11-101.7.

ELECTION REQUIREMENTS AMENDMENTS

HB 408

Rep. Kay Christofferson

Clarifies requirements for write-in ballots, mainly by specifying that a space for write-in candidates on ballots is only required in races in which a write-in candidate has qualified. Write-in candidates to be qualified must file a declaration of candidacy no later than 60 days before the general election.

AMENDS: 20A-6-101, 20A-6-102, 20A-6-301, 20A-6-402 and 20A-9-601.

VICTIM RESTITUTION AMENDMENTS

HB 411

Rep. Brad Wilson

This bill provides that the courts may apply bail that is posted by the defendant in a case by cash, credit card or debit card, toward accounts receivable in the case. Accounts receivable includes all amounts due to be paid in the case.

If there is restitution ordered to more than one person or agency, the priority for payment among those entities is as follows: 1) victim; 2) Utah Office for Victims of Crime; 3) any other government agency which has provided reimbursement to a victim; 4) reward money; 5) insurance companies; 6) county correctional facility.

AMENDS: 77-18-1, 77-18-6 and 77-20-4.

STATE OF UTAH TRANSPORTATION PLAN FOR DIXIE NATIONAL FOREST

HB 412

Rep. Mike Noel

Identifies long established network of roads in four of five ranger districts in Dixie National Forest in Iron, Kane, Garfield and Wayne Counties and declares them to be a State approved transportation network. Urges Dixie National Forest to recognize this transportation plan and conform its transportation plan to the State's.

ENACTS: 63J-8-105.9.

LEGISLATIVE SUBPOENA AMENDMENTS

HB 414

Rep. James Dunnigan

For some reason the attention of the legislature has been drawn to its ability to issue legislative subpoenas. Clearly the legislature needs authority to issue subpoenas and to compel compliance with those subpoenas. This bill becomes an issue for prosecutors as non-compliance with a legislative subpoena is now a Class A misdemeanor under a new Section 36-14-7 Criminal Contempt of Legislature. The Class A offense level was clearly intended to keep this matter in the district court.

The authority to bring the action is specifically given to the Attorney General, the Salt Lake County District Attorney, or a County or District Attorney where the defendant resides or has a place of business.

Compliance with a subpoena may also be enforced by “civil contempt” which would be prosecuted in the district court by Legislative Council.

There is a requirement that if the recipient of the subpoena wishes to challenge the constitutionality of the subpoena or wishes to assert a privilege, the person must appeal that to a “Legislative Review Committee”. So far so good.

What makes this procedure particularly interesting for prosecutors who are to enforce it, is Subsection 36-14-5(3)(a) which states

“(a) a person may not file with a court, and a court does not have jurisdiction to hear or decide, a disputative motion or any other motion or action challenging the scope, breadth or validity of a legislative subpoena.

(b) except as expressly authorized by this section, a person may not take legal action to challenge or limit a legislative subpoena.

(c) if a person attempts to take legal action that is not expressly authorized by this section to challenge or limit a legislative subpoena, the person:

(i) is not relieved from the duty to fully, strictly, and timely comply with the legislative subpoena: and

(ii) is subject to the criminal penalty described in Section 36-14-7 if the person fails to fully, strictly, and timely comply with the legislative subpoena.”

It will be interesting to see how that provision plays out in the long run.

AMENDS: 36-14-1.

ENACTS: 36-14-5.3, 36-14-5.5 and 36-14-7.

REPEALS AND REENACTS: 36-14-5

LOCAL AND SPECIAL SERVICE DISTRICT ELECTIONS AMENDMENTS

HB 415

Rep. Steve Eliason

This bill amends existing legislation to permit a local district board, or the administrative control board of a special service district that has elected members on the board, to hold elections in even-numbered years, with the approval of the lieutenant governor. The bill sets forth the application requirements and criteria for approval for a switch from odd-numbered to even-numbered year elections, as well as the procedure and requirements for switching back to odd-number year elections. Finally, the bill permits the lieutenant governor to increase a board member's term to adjust for a change in election year.

AMENDS: 17B-1-301, 17B-1-303, 17B-1-305, 17B-1-306, 17B-2a-404, 17D-1-106, 20A-1-102, 20A-1-201, 20A-1-202 and 20A-5-101.

INITIATIVE AND REFERENDUM IMPACT DISCLOSURE

HB 422

Rep. Brad Last

This bill amends the initiative and referendum processes in local government by requiring the government to prepare both financial and legal impact statements. Both statements are prepared by the local government's budget and legal officers and must be unbiased and in good faith. The financial impact statement sets out the fiscal impact in increased or decreased taxes, change in status of bonds, sources of funding affected, and costs and savings that will result if the initiative or referendum is passed. The legal impact statement sets out the potential legal effects on vested property rights, other laws and ordinances, or potential increased legal liabilities. The impact statements must be prepared within 25 days after receiving notice of the proposition from the clerk.

AMENDS: 20A-7-101, 20A-7-502.5 and 20A-7-513.
ENACTS: 20A-7-602.5.

RETIREMENT PARTICIPATION MODIFICATIONS

HB 426

Rep. Don Ipson

This bill modifies Title 49—the Utah State Retirement and Insurance Benefit Act—to allow a “withdrawing entity” to withdrawal its future employees from the Utah retirement system or plan. Specifically, the bill provides that “a withdrawing entity . . . may elect to:

- (a) continue its participation for all current employees of the withdrawing entity, who are covered by a system or plan as of [a specified date that is no later than January 1, 2017]; and
- (b) withdraw from participation in all systems or plans for all persons initially entering employment with the withdrawing entity, beginning on the [specified date].”

A “withdrawing entity” is defined narrowly to mean “an entity that:

- (a) participates in a system or plan under [Title 49] prior to July 1, 2014;

(b) provides mental health and substance abuse services for a county under Section 17-50-318;
(c) after beginning participation with a system or plan under [Title 49], has modified its federal tax status to a nonprofit organization that qualifies under Section 501(c)(3) of the Internal Revenue Code; and
(d) is not a state institution of higher education[.]”

It seems likely this narrow definition of “withdrawing entity” was used to allow a particular entity to withdraw from a Utah retirement system or plan going forward.

One other thing to note is that the bill states that “an employee who is employed with a withdrawing entity that has elected, prior to January 1, 2017, to exclude new employees from participation in this system” is not eligible for service credit in the system. If we take the language of this provision literally, it appears that any employee of a withdrawing entity that has made the election to withdraw would not be eligible for service credit—not just new employees.

I don’t believe the legislature intended this result. I believe the legislature intended to say that new employees—not existing employees—of a withdrawing entity would not be eligible for service credit in the system after having made the election under this bill. Thus, the legislature should have worded this provision more carefully, such as “an employee who is employed with a withdrawing entity that has elected, prior to January 1, 2017, to exclude new employees from participation in this system” is not eligible for service credit in the system “*if the employee was hired after the [specified date].*”

While this provision does not impact counties and municipalities, it could signal a trend and willingness to allow entities that participate in a Utah retirement system or plan to make an election to withdraw from the system or plan in the future.

ENACTS: 49-11-623.

AMENDS: 49-12-203, 49-13-203 and 49-22-203.

ASSET FORFEITURE REVISIONS

[HB 427](#)

Rep. Eric Hutchings

This bill adds *crime victim reparations* to the list of approved funding uses of the Asset Forfeiture Grant Program, which program gets its entire funding from asset forfeiture cases, which cases are pursued by only the state’s finest law enforcement officers and prosecutors. ☺

AMENDS: 24-47-117.

EFFECTIVE DATE: March 29, 2014, upon being signed by the Governor.

PEACE OFFICER MERIT AMENDMENTS

HB 433

Rep. Brad Dee

Enacts new chapter 30a of Title 17, the "Peace Officer Merit System in Counties of the First Class Act." As the name of the act states, the bill applies only to law enforcement agencies in Salt Lake County, it being the only county of the 1st class. The bill is fairly lengthy and enacts a bunch of new code sections. Other than the highlights drawn from the long title, I won't go into detail. The new statute appears to be very comprehensive.

Law enforcement officers in Salt Lake County who need to be up on current merit system provisions and their legal advisors had better read the bill carefully.

As near as I can tell, the bill makes no changes in the current Peace Officer Merit System for law enforcement agencies outside of Salt Lake County.

As summarized in the long title, this bill:

- enacts the Peace Officer Merit System in Counties of the First Class Act, including provisions relating to the following:
 - definitions and application;
 - merit system commission powers and duties;
 - merit officer conditions of employment;
 - disciplinary actions and appeals; and
 - the sheriff's authority to appoint more than one chief deputy, deputy chief, or undersheriff, and
- makes technical and conforming amendments.

AMENDS: 17-22-2, 17-30-2, 17-33-1 and 53-13-105.

ENACTS: Chapter 30a of Title 17.

SENATE BILLS

ELECTION OFFENSE AMENDMENTS

SB 11

Sen. Margaret Dayton

This bill enacts new Part 8 of Chapter 1, Title 20A, "Civil Action for Election Code Violation."

A number or terms used in the new part are defined.

The bill then provides that any registered voter may file a verified petition alleging a violation of any provision of Title 20A, if the registered voter a) has information relating to the alleged violation; and b) the allegation is against a candidate for whom the registered voter had the right to vote, a personal campaign committee of that candidate, or a member of a personal campaign committee of that candidate.

Regardless, it appears, of the office for which the candidate is running, or the level of government in which the election is being held, the registered voter shall file the verified petition with the:

- (a) the lieutenant governor, unless the verified petition alleges a violation by the governor, the lieutenant governor, or an employee of the lieutenant governor's office; or
- (b) the attorney general, if the petition alleges a violation by the governor, the lieutenant governor, or an employee of the lieutenant governor's office.

Upon receipt of the verified petition, the lieutenant governor (or another person in the event of a conflict) must review the petition to determine whether a special investigation is necessary. The bill sets out a number of factors to be considered by the reviewing official in determining whether a special investigation is necessary.

If the reviewing official determines that a special investigation is necessary, the matter shall be referred to the attorney general, who shall appoint special counsel. If the petition alleges misconduct by the attorney general, or if the reviewing official determines that the Attorney General has a conflict of interest, the reviewing official shall appoint a person who is not an employee of the Office of the Attorney General as special counsel.

The duties of any special counsel are describes, as well as the time deadlines within which the special counsel must issue a report. The act then provides a procedure whereby the reviewing official may authorize the special counsel to file a civil action.

If a civil action is filed and the court finds that the candidate, the candidate's personal campaign committee, or a member of the candidate's personal campaign committee committed a significant violation of any provision of the title, the judge shall enter an order:

- (i) declaring void the election of the candidate to that office;

- (ii) ousting and excluding the candidate from office; and
- (iii) declaring the office vacant.

If the candidate against whom the complaint is made is a candidate for the legislature, the court shall forward its findings to the Lieutenant Governor, who shall forward the court's findings to the legislative house for which the candidate is running.

Appeals from the verdict of the court are done as in any other civil action.

The act provides for awards of costs and attorney fees to the prevailing party. It also provides for compensation of special counsel. The compensation is to be paid out of the state treasury.

The bill provides no criminal sanctions for violations of the act.

ENACTS: 20A-1-801, 20A-1-802, 20A-1-803, 20A-1-805 and 20A-1-806.

RENUMBERS AND AMENDS: 20A-1-804, 20A-1-807 and 20A-1-808.

REPEALS: 20A-1-703.

THEFT AMENDMENTS

SB 13

Sen. Daniel Thatcher

This bill makes amendments to the enhancement provisions found in 76-6-412 for repeat theft offenders. The bill had the support of both the SWAP Board and the County and District Attorneys Association.

WHAT REMAINS UNCHANGED?

- The offenses that are subject to enhancement under 76-6-412 remain unchanged. They are:
 - (A) any theft, any robbery, or any burglary with intent to commit theft;
 - (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or
 - (C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B);
- The level of crime for any first or second offense punishable under 76-6-412. The factors that determine at what level a first or second offense will be charged remain unchanged. (Automobile, gun, livestock, value of property, etc., all remain unchanged.)

WHAT IS AMENDED?

The bill amends those portions of 76-6-412 that enable enhancement of new offenses because of prior convictions.

The new offense may be enhanced to a 3rd Degree Felony if:

- the actor has been twice before convicted of a qualifying offense, each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based, *and at least one of those convictions is for a class A misdemeanor*;
- the actor has been twice before convicted of a qualifying offense, each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based, *and the value of the property stolen is or exceeds*

\$500 but is less than \$1,500; or

- the actor has been previously convicted of *a felony violation* of any qualifying offense;

In short, the new offense can be enhanced to a 3rd degree felony if:

two priors and one was a class A;

two priors and the new offense is a class A; and/or

one or more priors, one of which was a felony.

The new offense may be enhanced to a class A misdemeanor if:

- the actor has been twice before convicted of any qualifying offense and each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based.

AMENDS: 76-6-412.

WATER AND IRRIGATION AMENDMENTS

SB 17

Sen. Margaret Dayton

While most of the changes are technical and stylistic, the significant change is that documents transferring ownership of water rights are to be filed in the applicable county recorder's office. Prior to this, they were to be filed with the State Engineer. This bill also clarifies the State Engineer's authority regarding streams and other waterways - permits must be obtained before any work is done within streams and other waterways. (This is separate from any permits required by the Corps.)

AMENDS: 73-2-25, 73-3-18, 73-3-26, 73-3-29 and 73-5-3.

LOCAL GOVERNMENT GENERAL FUND AMENDMENTS

SB 18

Sen. Daniel Thatcher

This bill amends provisions related to a town, city, or county general fund. Prior to the amendments, the statutes referred to the "general fund" and there was some confusion as to whether to that referred to the state's general fund or the municipality's general fund. The bill amends the applicable statutes to clarify that the term refers to a town, city, or county general fund rather than to the state general fund.

The bill also clarifies the limitation that the accumulation of a fund balance in a town, city, or county's general fund may not exceed 75% of the total revenue of the general fund. In making this calculation, many municipalities were using estimates for the total revenue of the next fiscal period rather than the current fiscal period and then using those estimates to compare to the actual fund balances for the current fiscal year. This allowed a municipality to estimate high on the future revenues, providing a larger cushion to meet the 75% limitation. This bill clarifies that total revenue for purposes of the calculation is the current fiscal period and not the future fiscal period.

AMENDS:

10-1-302

10-5-106

10-5-113

10-5-118

10-5-119	10-6-133	17-36-6	17-36-31
10-6-106	10-18-302	17-36-8	17-36-36
10-6-109	17-16-18	17-36-9	17-36-37
10-6-116	17-27a-403	17-36-16	17-36-51
10-6-117	17-31-3	17-36-26	17-36-52
10-6-129	17-36-3	17-36-27	17-36-53
10-6-131	17-36-3	17-36-29	17-36-54

ENACTS: 10-5-102.5.

APPOINTMENT AND QUALIFICATION OF MEMBERS OF THE STATE TAX COMMISSION

SB 19

Rep. Howard Stephenson

This bill substantially changes the qualifications and appointment procedures for members of the Utah State Tax Commission.

First, the governor must first request a list of names from the following:

- (1) Utah State Bar,
- (2) Organizations that represent certified public accountants,
- (3) Organizations that represent appraisers,
- (4) National organizations that offer a professional certification in property tax, sales and use and tax and state income tax based upon experience and education. In the end the governor can appoint someone nominated by the above organizations or anyone else at his "own choosing."

Second, potential nominees must have:

- (1) "Significant tax experience relevant to holding office as a commissioner;"
- (2) "Knowledge of tax administration or tax compliance,"
- (3) "executive and administrative experience; and
- (4) "substantial knowledge and expertise in one or more of the following:
 - (a) Excise taxation;
 - (b) Income tax;
 - (c) Sales and use tax; and
 - (d) Corporation taxation;

At least one member must have ad valorem property taxation and accounting. UAC or the counties can propose names.

AMENDS: 59-1-201 AND 59-1-202.

WORKFORCE SERVICES JOB LISTING AMENDMENTS

SB 22

Sen. Peter Knudsen

This bill requires that local governments advertise job openings on a website operated by workforce services. State agencies are also required to do the same for job opportunities among state contractors.

AMENDS: 35A-1-102, 35A-2-203 and 63G-6a-402.

CANDIDATE CERTIFICATION AMENDMENTS

SB 25

Sen. Deidre Henderson

This bill amends the Election Code's deadlines for certifying a candidate for a primary election. For calendar year 2014 only, the deadline for a registered political party to certify its candidates for a primary election is 5 p.m. on April 28, 2014. Similarly, the 2014 deadline for the lieutenant governor to certify to county clerks the candidates appearing on the primary ballot shall be 5 p.m. on April 29, 2014. The provisions of this bill automatically repeal on January 1, 2015.

AMENDS: 63I-2-220.

ENACTS: 20A-9-403.1.

EFFECTIVE DATE: February 13, 2014, upon being signed by the Governor.

UTAH RETIREMENT AMENDMENTS

SB 28

Sen. Todd Weiler

Makes numerous technical corrections to the Utah State Retirement and Benefits Act. Some of the highlights include:

- Timing deadlines for a beneficiary to claim monthly benefits
- Clarifies reporting provisions for participating employers regarding accrual of service credit.
- Limits service credit accrual during disability.

AMENDS:

49-11-102	49-12-204	49-13-402	49-16-201
49-11-201	49-12-401	49-14-201	49-16-401
49-11-403	49-12-402	49-14-501	49-16-504
49-11-505	49-13-102	49-14-504	49-17-401
49-11-603	49-13-201	49-15-201	49-17-402
49-11-610	49-13-202	49-15-202	49-17-502
49-12-201	49-13-203	49-15-401	49-18-401
49-12-202	49-13-204	49-15-501	49-18-402
49-12-203	49-13-401	49-15-504	49-18-502

49-19-201	49-22-201	49-22-304	49-23-503
49-19-401	49-22-203	49-23-201	67-19-43
49-21-102	49-22-204	49-23-303	

ENACTS: 49-21-408.

EFFECTIVE DATE: March 3, 2014, upon being signed by the Governor.

VOTER INFORMATION AMENDMENTS

SB 36

Sen. Karen Mayne

This bill amends the Election Code and the Government Records Access and Management Act with respect to the disclosure, provision or use of the list of registered voters or the information contained therein. The bill limits how and when a voter's date of birth may be released or used. It permits a voter to request that their voter registration record be classified as private under GRAMA if its disclosure is likely to place them at risk of being stalked or harassed.

This amendment also imposes criminal penalties and civil fines for any person who unlawfully obtains, provides, or uses a voter's date of birth obtained from a voter registration record. It is now a class A misdemeanor to obtain a voter's birth date under false pretenses, or to use or provide such data in a manner not authorized by law. The civil fine shall be in an amount equal to the greater of (i) the product of 30 and the square root of the total number of dates of birth obtained, provided, or used unlawfully, rounded to the nearest whole dollar; or (ii) \$200.

This amendment is of particular importance to county clerks, upon whom it imposes significant responsibilities with respect to the safeguarding of voter registration information.

AMENDS: 20A-104, 20A-2-108, 20A-2-306, 20A-2-308, 20A-6-105, 63G-2-202, 63G-2-301 and 63G-2-302.

STATE TREE CHANGE

SB 41

Sen. Ralph Okerlund

The state tree has been changed from the blue spruce (*picea pungens*) to the quaking aspen (*populus tremuloides*).

AMENDS: 63G-1-601.

ADMINISTRATIVE SUBPOENA MODIFICATIONS

SB 46

Sen. Mark Madsen

The bill amends section 77-22-2.5 by substituting "judicial orders" for administrative

subpoenas.

To obtain such an order, a law enforcement officer prepares a request stating that (s)he has reasonable suspicion that an electronic communications system or service has been used in the commission of a criminal offense (77-22-2.5 (2)). In the request the officer must articulate facts showing reasonable grounds to believe that the records sought are relevant to an ongoing investigation.

The request and order can only be used for certain crimes, primarily sexual crimes against children. After preparation by the officer, the request must be given to a prosecutor for review and authorization to present it to a district court judge. Upon receiving approval from the prosecutor, the officer presents the request to a judge who reviews it for legal sufficiency, i.e.: that it states the basis of the reasonable suspicion and the facts showing reasonable grounds.

If the judge signs the order, it can be mailed, e-mailed or faxed to the Internet Service Provider (ISP) that is providing service for the device. The ISP must then provide to the officer the names of subscribers, service customers and users, the addresses of the same and other information articulated in 77-22-2.5(2)(c)(i) through (v). The ISP may not disclose the order for 90 days.

There are reporting requirements. Information collected in the report must be sent to CCJJ every year by February 15th.

The Children's Justice Division and the Investigation Division of the AG's Office have a template for the request and the order

AMENDS: 77-22-2.5.

EFFECTIVE DATE: March 25, 2014, upon being signed by the Governor.

EMERGENCY MANAGEMENT ACT AMENDMENTS

SB 47

Sen. Wayne Harper

This bill exempts out-of-state businesses that provide recovery services in Utah during a declared disaster or emergency from certain licensing and registration requirements, income taxation of out-of-state employee requirements, and sale and use taxes during the period of the declared disaster. Out-of-state businesses that continue to operate in Utah after the emergency has ended are subject to the normal requirements for doing business in Utah.

AMENDS: 59-7-102, 59-7-404.5, 59-10-403 and 59-12-104.

ENACTS: 53-2a-1201, 53-2a-1202, 53-2a-1203, 53-2a-1204, 53-2a-1205 and 59-10-116.1.

EFFECTIVE DATE: Except as provided below, this bill takes effect on May 13, 2014.

The actions affecting Section 59-12-104 take effect on July 1, 2014.

LOCAL GOVERNMENTAL ENTITIES AMENDMENTS

SB 51

Sen. Jerry Stevenson

This bill is an amalgamation of several matters related to local district powers and activities. It prohibits a municipality from transferring money out of an enterprise fund unless it follows specific procedures. The bill makes a number of changes in local district matters including donations or fee waivers for non-profits; bundling of multiple goods or services; election of trustees by districts, limits on changing trustees from elected to appointed; and permits a trustee appointed by a county or city to be an employee of the county or city, if a disclosure is filed. It includes some strong fiscal enforcement powers in the state auditor, including freezing a district's funds.

AMENDS:

10-5-107,	17B-1-609,	17D-1-102,
10-6-106,	17B-1-641,	17D-1-302,
10-6-135,	17B-1-901,	17D-1-303,
17B-1-103,	17B-2a-404,	17D-1-304,
17B-1-202,	17B-2a-702,	20A-1-512,
17B-1-303,	17B-2a-804,	20A-4-301,
17B-1-304,	17B-2a-807,	41-6a-203,
17B-1-306,	17B-2a-821,	53-10-108,
17B-1-306.5,	17B-2a-825,	67-3-1 and
17B-1-511,	17B-2a-1005,	78B-2-216.

ENACTS: 10-5-102.5

UTILITY RELOCATION ON HIGHWAY PROJECTS

SB 52

Sen. Kevin Van Tassell

While this bill only affects projects by UDOT on state roadways, local entities need to be aware, as it may happen to us. This bill requires the State to reimburse utility companies for the relocation of their facilities during a road project even if the utilities are in the public's right-of-way. Make sure your franchise agreements are up to date.

AMENDS: 72-6-116.

ELECTIONS AMENDMENTS

SB 54

Sen. Curtis Bramble

Sparking hot commentary, this bill represents a compromise in the ideological debate this session between the proponents of Count My Vote campaign and proponents of the Caucus system. This bill amends provisions of the Election Code relating to nomination of candidates, primary and general elections, and ballots. It makes important changes in how a person runs for office. Generally, it permits a member of a registered political party to seek the registered political party's nomination

for any elective office by seeking the nomination through the registered political party's convention process, by seeking the nomination by collecting signatures, or both. For those planning to seek political office, this 58 page bill is a must read.

AMENDS: 20A-1-102, 20A-1-501, 20A-5-101, 20A-6-301, 20A-6-302, 20A-6-303, 20A-6-304, 20A-6-305, 20A-9-101, 20A-9-201, 20A-9-202, 20A-9-403 and 20A-9-701.

ENACTS: 20A-1-103, 20A-9-405, 20A-9-406, 20A-9-407, 20A-9-408, 20A-9-409 and 20A-9-410.

EFFECTIVE DATE: January 1, 2015.

AUTISM SERVICES AMENDMENTS

SB 57

Sen. Brian Shiozawa

This bill requires that a health benefit plan offered in the individual market or the large group market and entered into or renewed on or after January 1, 2016 shall provide coverage for the diagnosis and treatment of autism spectrum disorder (“autism”) for children ages 2 – 9. The Utah Insurance Commissioner will adopt administrative rules setting the minimum standards of coverage for the treatment of autism, which shall establish durational limits, amount limits, deductibles, copayments, and coinsurance for the treatment of autism that are similar to, or identical to, the coverage provided for other illnesses or diseases.

Coverage for behavioral health treatment shall cover at least 600 hours per year, and a health benefit plan shall provide board certified behavior analysts and mental health providers for such treatment. A health care provider shall submit a treatment plan to the insurer within 14 business days of starting treatment. An insurer shall have the right to request a review of that treatment (treatment goals and progress toward those goals) once every six months. If an insurer determines to stop treatment as a result of this review, that determination may be reviewed internally and by an independent body.

The Insurance Commissioner may waive the above requirements if 1) the insurer demonstrates that autism treatment claims causes at least a 1% increase in premiums for an insurer’s entire pool of business in the individual market or large group market, or 2) the Utah AG issues an opinion that the 600 hour per year behavioral treatment minimum is contrary to federal law. The law sunsets on January 1, 2019.

AMENDS: 63I-1-231.

ENACTS: 31A-22-642.

EFFECTIVE DATE: Except as provided below, this bill takes effect on May 13, 2014.

The amendments to Section 63I-1-231 take effect on July 1, 2014.

REVISIONS TO PROPERTY TAX

SB 61

Sen. Deidre Henderson

This is primarily a county and district bill. It eliminates the requirement to hold a Truth-in-Taxation public hearing in August for calendar year entities. Instead, taxing entities are required to announce a tax increase in a public meeting that is held 14 days before the date of a regularly scheduled general or municipal election, giving due notice on the agenda for such announcement. Taxing entities must also provide mailed notice of the tax increase and public hearing (allowed through the treasurer's tax notice); advertise the tax increase with large borders and font size (traditional truth-in-taxation style); and hold a public hearing in December. An exception to the general requirement is made for a county executive calendar year taxing entity. This bill also amends the timing for a public hearing held for the purpose of considering the imposition of a judgment levy. This bill provides revisor instructions.

AMENDS: 59-2-918.5, 59-2-919, 59-2-919.1 and 63I-2-259.

UTAH CODE SECTIONS

AFFECTED BY REVISOR INSTRUCTIONS: 59-2-919 and 59-2-919.1.

EFFECTIVE DATE: Except as provided BELOW, this bill takes effect on May 14, 2014.

The actions affecting Section 59-2-918.5 take effect on January 1, 2015.

SALES AND USE TAX EXEMPTION MODIFICATIONS

SB 65

Sen. Howard Stephenson

This bill amends the mining and manufacturing equipment sales exemption. The fiscal impact of the bill is \$104,000 per year to local entities. It is one small step forward in exempting all business inputs from sales and use tax. The significant change relates to mining operations. Machinery that moves dirt is now exempt from sales tax.

AMENDS: 59-12-102, 59-12-103 and 59-12-104.

EFFECTIVE DATE: July 1, 2014.

STATE DATA PORTAL AMENDMENTS

SB 70

Sen. Deidra Henderson

This bill amends the duties and membership of the transparency advisory board to improve the information on the state website to better inform residents and to prioritize government information that would be valuable for public access. It provides that, by January 2016, the state website will be a point of access for GRAMA requests for persons seeking information from counties, cities and school districts – special and local districts are affected by 2017.

AMENDS: 63A-3-403 and 63A-3-404.

IMPOUNDING UNINSURED VEHICLES AMENDMENTS

SB 72

Sen. Lyle Hillyard

Effective July 1, 2015, a peace officer or the Motor Vehicle Division shall, without a warrant, impound any vehicle that is being operated on a highway without owner's or operator's security in effect unless the peace officer or division makes a determination that:

4. (1) impounding the vehicle would present a public safety concern to the operator or any of the occupants of the vehicle; or
5. (2) impounding the vehicle would prevent the peace officer or division from addressing other public safety considerations.

IMPORTANT:

6. A peace officer or the division may not impound a vehicle if the operator is not carrying evidence of owner's or operator's security **unless** the lack of owner's or operator's security is verified through the Uninsured Motorist Identification Database.
7. If the operator is carrying evidence of owner's or operator's security and the Uninsured Motorist Identification Database indicates that owner's or operator's security is not in effect, the peace officer or division may not impound the vehicle without first making a reasonable attempt to independently verify that owner's or operator's security is not in effect.

This bill provides for a hearing and reimbursement process for wrongful impounds when application is made within six months from the wrongful impound.

AMENDS: 41-1a-1101, 41-1a-1103 and 41-12a-806.

EFFECTIVE DATE: January 1, 2015.

UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

SB 79

Sen. Lyle Hillyard

Amends the authority of county recorders to include establishing procedures and guidelines governing electronic submission of documents for recording and requires that such procedures will be established by July 1, 2016 for first and second class counties, by July 1, 2017 for third and fourth class counties and by July 1, 2018 for fifth and sixth class counties.

Permits county recorders to charge a surcharge for electronically submitted documents in addition to any other recording fee that is calculated to recover the costs of complying with the Uniform Real Property Electronic Recording Act ("Uniform Act") but does not exceed 10% of the cost before the surcharge.

Allows an electronic document to be recorded to satisfy any requirement at law that a recorded document be on paper. Documents can be recorded if they contain electronic signatures. Electronic signatures of notaries or witnesses are sufficient as long as they are accompanied by all other required information, and a physical or electronic stamp or seal is not required. Paper

documents shall still be accepted for recording and may be converted into electronic form.

Creates the Utah Electronic Recording Commission consisting of six members, five of whom are appointed by the governor (four county recorders and someone nominated by the Utah Land Title Association) with the remaining member (who must be an “elected county commissioner”) selected by the first five. The purpose of the commission is to adopt standards for implementing electronic recording of documents, to keep the standards and practices of the county recorders in harmony with the standards and practices of other states that have also enacted this uniform law, and to keep the technology used for recording documents compatible with technology used by other states that have also enacted this uniform law.

AMENDS: 17-21-1, 17-21-18.5, 17-21-20 and 57-3-106.

ENACTS: 17-21a-101, 17-21a-102, 17-21a-201, 17-21a-202, 17-21a-203, 17-21a-301, 17-21a-302, 17-21a-401, 17-21a-402 and 17-21a-403.

EFFECTIVE DATE: Except as provided below, this bill takes effect on July 1, 2015.
Section 17-21a-302 takes effect on May 13, 2014.

LOCAL SALES AND USE TAX ACT AMENDMENTS

SB 83

Sen. Lyle W. Hillyard

This is a sunset bill. It repeals the provision that required the Tax Commission to retain a portion of the local sales and use tax revenues within certain counties and deposit the revenues into a special fund of the county, or a city, town, or other political subdivision of the state located within that county, that has issued bonds to finance sports or recreational facilities or that is leasing sports or recreational facilities, to repay those bonds or to pay the lease payments.

AMENDS: 59-12-204.

CHILD INTERVIEW AMENDMENTS

SB 88

Sen. Ralph Okerlund

Current law provides a criminal penalty under 77-37-4 for displaying or distributing recordings of children made at a Children’s Justice Center. The purpose of this statute is to prevent further occurrence of some terrible situations in which a perpetrator has displayed such a recording in order to further humiliate and victimize a child. Unfortunately the current statute and the Government Records Access Management Act have not been comfortably compatible with each other. If one attempts to prosecute under that law it is difficult to tell exactly what defenses apply. In addition it is difficult to tell whether the Children’s Justice Center and other agencies are able to do their normal jobs without technically violating the statute.

SB 88 is a comprehensive approach to solving both those issues. The criminal provision will now be found in 77-37-4(7) which states “except as otherwise provided in this section, it is a Class B misdemeanor for any individual to distribute, release or display any recording or transcript of an

interview of a child victim conducted at a Children's Justice Center."

The rest of the bill is taken up with deciding who may distribute those recordings or transcripts and under what conditions. There are certain parties who must deal with these on a regular basis and need to be able to distribute and receive them without a court order. This list is found in Subsection 6 and includes the Division of Child and Family Services, the Department of Human Services, prosecutors, law enforcement agencies and of course the Children's Justice Centers among others. Provision is made for experts retained by the attorney for the defendant. The defense attorney may permit the defendant to view the recording or transcript but may not distribute or release the recording to the defendant.

Those who investigate or prosecute these cases should read the enrolled copy of Senate Bill 88 which is available on the legislative web-site. The new restrictions will likely be in effect fairly soon as the bill will become effective when signed by the Governor. The provisions of the bill allowing use by various agencies are strictly controlled and should also be carefully reviewed by any who use CJC recordings or transcripts for any sort of legal action or for training purposes.

In order to eliminate the conflict with the Government Records Access Management Act, the classification of CJC recordings as a "protected" record was eliminated. In fact the recordings were eliminated as GRAMA records all together. That particular action was the brainchild of Megan Smith in the civil division of the Salt Lake County District Attorney's Office. This bill was a tremendous group effort of many individuals.

AMENDS: 63G-2-103, 63G-2-305, 77-37-4 and 78A-6-317.

EFFECTIVE DATE: March 28, 2014, upon being signed by the Governor.

RESIDENCY AMENDMENTS

SB 90

Sen. Todd Weiler

This bill amends the definitions of terms that relate to the determination of residency for voting and other purposes. It defines "principal place of residence" as the single location where a person's habitation is fixed and to which, when absent, the person intends to return; a "resident" is a person whose principal place of residence is within a specific Utah voting precinct. The bill also sets forth the factors an election official or judge shall use when determining a person's principal place of residence.

AMENDS: 20A-2-105.

METAL THEFT AMENDMENTS

SB 92

Sen. Gene Davis

The bill makes three changes to the metal theft statute that will assist in investigation and enforcement of metal thefts.

8. Provides that the records and identification requirements regarding transactions in regulated metal apply also to persons who refine or melt regulated metals;
9. Mandates that the identification provided for transactions in regulated metals be a form of identification provided by a state or the federal government; and
10. Defines a “Metals Refiner” as “an individual or business that refines or melts any regulated metal, but does not include an individual or business that primarily uses ore, concentrate, or other primary materials in refining, melting, or producing any regulated metal.”

AMENDS: 53-10-108.

JUDICIARY AMENDMENTS

SB 108

Sen. Lyle Hillyard

This bill is mostly a clean-up bill for the courts. For law enforcement, be aware that this bill requires any citation issued shall include: *(i) whether the offense is a domestic violence offense.*

It also provides that if a petitioner files for an expungement using e-filing, the petitioner or petitioner’s attorney will keep the original certificate of eligibility until the proceedings are over.

AMENDS: 77-7-20, 77-40-103, 77-40-107, 78A-2-301, 78A-2-501 and 78B-7-405.

PUBLIC MEETINGS AMENDMENTS

SB 113

Sen. Karen Mayne

This bill amends the public meetings act by creating a new classification of public body. A “specified body” is a group that would not be otherwise defined as an OPMA public body but is an administrative, advisory, executive or legislative group consisting of 3 or more members and including at least one legislator appointed by the legislature or the governor. Such a body becomes subject to the OPMA. The bill also repealed an exception that treated a discussion of administrative or operational matters as exempt from the act.

AMENDS: 52-4-102 and 52-4-202.

POLL WORKER AMENDMENTS

SB 116

Sen. Margaret Dayton

This bill provides for county legislative bodies to appoint poll workers and election judges in statewide special elections, countywide special elections and regular county elections.

First, the bill requires the county legislative body to appoint poll workers for statewide and countywide special elections in addition to general elections and primary elections. It then makes

the existing requirements for appointing poll workers and receiving, counting and canvassing judges applicable to statewide and countywide special elections. These requirements include the party requirements for receiving and counting judges.

Second, the bill allows a county legislative body to appoint inspecting judges at statewide and countywide special elections in addition to their appointment at the regular general election.

Third, the bill defines a “regular county election” to be a local election, in addition to municipal, district, special and bond elections, and includes the county legislative body as an entity that is required to appoint poll workers and receiving judges for local elections. It restricts the county legislative body’s appointment of poll workers who are related to a candidate.

Finally, a county legislative body is also now included in the entities that may compensate poll workers.

AMENDS: 20A-1-102, 20A-5-601 and 20A-5-602.

ONLINE VOTER REGISTRATION REVISIONS

SB117

Sen. Margaret Dayton

Previously, registering or requesting an absentee ballot online required an individual to have a driver license or identification card signature on file with the Driver’s License Division. This bill now allows an individual to register to vote or request an absentee ballot if the individual has a signature on file in the lieutenant governor’s statewide voter registration database as well.

The lieutenant governor may now send information to the voter’s county clerk upon receiving:

- (1) all information from an applicant and either;
- (2a) receiving all information from the Driver’s License Division; or
- (2b) ensuring that the applicant’s signature is on file in the statewide voter registration database.

AMENDS: 20A-2-206.

SHELTER ANIMAL VACCINE AMENDMENTS

SB 120

Sen. Scott Jenkins

This bill exempts an employee of an animal shelter from the requirement to be licensed as a veterinarian for the purpose of administering a rabies vaccination to a shelter animal if the employee is under the indirect supervision of a veterinarian under contract with the animal shelter.

The bill also exempts an animal shelter operating under the indirect supervision of a veterinarian from the requirement to obtain a pharmacy license in order to handle, store, or administer a rabies vaccination or a drug used for animal euthanasia.

AMENDS: 58-17b-309 and 58-28-307.

TAXATION RELATED REFERENDUM AMENDMENTS

SB 134

Sen. John Valentine

This bill provides time periods for actions regarding a referendum petition for property tax increases, exempts property tax referendum petitions from the voter information pamphlet requirement, and addresses the tax rate if the referendum passes or fails. There were two primary issues the legislature was attempting to address with this bill. First, although the election code gives referendum sponsors 45 days from when the referred law is passed to gather petition signatures, much of that time is taken up by the government in preparing the referendum process. This bill addresses that by compressing the time the government has to complete its statutory duties and by giving the sponsors 40 days to gather signatures from the time the sponsors receive the referendum packets from the local clerk rather than from when the law was passed. The compressed time period includes only 10 working days for the county clerk to verify that each petition signer is a registered voter.

The second issue the legislature wanted to address is that because of truth-in-taxation time frames, a referendum on a property tax increase might not be heard until the next year's election, which means the referendum will not be voted on until a significant amount of the money has already been spent. The bill addresses this by requiring that a qualifying referendum must appear on the ballot for the earlier of the next regular general election or the next municipal general election unless a special election is called. It should also be noted that these compressed time frames only apply if the fiscal year taxing entity is seeking to impose a tax rate that exceeds the certified tax rate. If the taxing entity is simply going to adopt the certified tax rate, these compressed time frames will not apply.

ENACTS: 20A-7-613.

VOTER REGISTRATION AMENDMENTS

SB135

Sen. Scott Jenkins

While voter registration generally closes 30 days prior to an election, this bill provides for exceptions to this requirement for individuals who register in person at a county clerk's office, individuals who register electronically, and individuals whose registration is not timely filed by someone else.

The deadlines for persons qualified to vote who register in-person at the county clerk's office are as follows:

- after the 30-day deadline but at least 15 calendar days prior to the election the person may vote;
- between 14 calendar and 8 calendar days prior to the election the person may vote on election day;
 - but clerk must tell person no early voting;
- 7 or fewer calendar days prior to the election the person is registered to vote but may not vote in the pending election.

For those who register to vote in the lieutenant governor's electronic system, the deadlines are similar with one exception:

- between 14 calendar and 7 days prior to the election the person may vote on election day but no early voting;
- 6 or fewer calendar days prior to election the person is registered to vote but may not vote in pending election.

Electronic registration requires that the person have authorized use of the applicant's driver license or identification card signature for voter registration purposes or have a signature on file (see SB117).

This bill also requires a provisional ballot to be counted if an election officer receives the voter's registration at least one day prior to the election and the election officer determines that the registration form was completed at least 8 days prior to the election but the sole reason the voter registration was late is that it was given to someone else to file.

AMENDS: 20A-2-102.5, 20A-2-201, 20A-2-206 and 20A-4-107.

LOCAL ELECTIONS AMENDMENTS

SB136

Sen. Howard Stephenson

These amendments modify the deadline for delivering a signed and verified referendum packet for both local tax laws and other laws and the deadline for certifying the referendum signatures. The amendments also provide that a referendum challenging a local tax law, those that increase a tax or impose a new tax, may be but are not required to be conducted entirely by absentee ballot. Previously, the deadline for submitting referendum packets to the county clerk varied from 45 days to 100 days from the dates the law was passed. The new deadline for the submission of all referenda packets is 45 days, and the deadlines are shortened for the county clerk to check the names (down from 60 days to 15 days) and certify the names (down from 75 days to 30 days). The new deadline for a local clerk who receives a referendum packet from a county clerk to determine whether the number of certified signatures on a referendum packet is sufficient is 15 days after receipt.

Unlike referenda on other laws, which are decided at the next regular general election, municipal general election, or at a special election, the election date for a referendum challenging a local tax law may be conducted entirely by absentee ballot. If the referendum is conducted entirely by absentee ballot, the election date must be set within 30 days of the date the election referendum qualifies for the ballot. In addition, the election officer must obtain, in person, the signatures of each voter or each signature from the county clerk, compare the signatures obtained with the signature on each absentee ballot, and then determine the authenticity of the signature.

AMENDS: 20A-7-101, 20A-7-606, 20A-7-607, 20A-7-609 and 20A-7-609.5.

DRIVER LICENSE MODIFICATIONS

SB 144

Sen. John L. Valentine

This bill repeals authorization allowing the Driver License Division (DLD) to, immediately and without a hearing, deny, suspend, disqualify or revoke the license of any person without receiving a record of the conviction for certain offenses which would result in such a sanction. DLD may still take action against a license without receiving a record of conviction for certain offenses, but it must now provide notice of a hearing and afford the person an opportunity for a hearing in the person's county of residence.

AMENDS: 53-3-221 and 53-3-1007.

BACKGROUND CHECK AMENDMENTS

SB 145

Sen. Curtis Bramble

The Criminal Investigations and Technical Services Division may not disseminate criminal history record information to *qualifying entities* regarding employment background checks if the information is related to charges:

- (a) that have been declined for prosecution;
- (b) that have been dismissed; or
- (c) regarding which a person has been acquitted.

"Qualifying entity" means a business, organization, or a governmental entity that employs persons or utilizes volunteers who deal with:

- (a) national security interests;
- (b) care, custody, or control of children;
- (c) fiduciary trust over money;
- (d) health care to children or vulnerable adults; or
- (e) the provision of any of the following to a vulnerable adult:
 - (i) care;
 - (ii) protection;
 - (iii) food, shelter, or clothing;
 - (iv) assistance with the activities of daily living; or
 - (v) assistance with financial resource management.

AMENDS: 53-10-108.

ALL-TERRAIN VEHICLE AMENDMENTS

SB 154

Sen. Scott Jenkins

This bill removes from cities with a population of 7,500 or greater the authority to restrict the use of street legal all-terrain vehicles on the streets and highways of the city. With this amendment, as near as I can tell, street legal ATVs may be used on any road, street or highway in

the state, except limited access highways and interstate freeways, and there is nothing local government can do about it.

SPECIAL RULES FOR SALT LAKE COUNTY: The bill leaves in effect the provision that street legal ATVs may not be used on streets and highways in counties of the 1st Class (Salt Lake County), and in cities within counties of the 1st class, unless the county or city has specifically designated the street or highway for use by street legal ATVs.

AMENDS: 41-6a-102 and 41-6a-1509.

REGULATION OF DRONES

SB 167

Sen. Howard Stephenson

“If I blasted that \$1700 drone out of the sky, would I get in trouble for that? ... If I see one in my backyard – it’s going down.”

-Serious question and comment made during floor debate.

This is the third unique search warrant bill intended to address rampant privacy concerns.

"Unmanned aerial vehicle" means an aircraft that:

- (i) is capable of sustaining flight; and*
- (ii) operates with no possible direct human intervention from on or within the aircraft.*

"Target" means a person upon whom, or a structure or area upon which a person:

- (a) has intentionally collected or attempted to collect information through the operation of an unmanned aerial vehicle; or*
- (b) plans to collect or attempt to collect information through the operation of an unmanned aerial vehicle.*

63G-18-103. Warrant required -- Exceptions.

(1) A law enforcement agency may not obtain, receive, or use data acquired through an unmanned aerial vehicle unless the data is obtained:

- (a) pursuant to a search warrant;*
- (b) in accordance with judicially recognized exceptions to warrant requirements; or*
- (c) subject to Subsection (2), from a person who is a nongovernment actor.*

(2) A nongovernment actor may only disclose data acquired through an unmanned aerial vehicle to a law enforcement agency if:

- (a) the data appears to pertain to the commission of a crime; or*
- (b) the nongovernment actor believes, in good faith, that:*
 - (i) the data pertains to an imminent or ongoing emergency involving danger of death or serious bodily injury to an individual; and*
 - (ii) disclosing the data would assist in remedying the emergency.*

The bill also has extensive requirements placed upon law enforcement for records retention and destruction, as well as reporting the number of such drone warrants used.

ENACTS: 63G-18-101 through 105.

PUBLIC MEETING MATERIALS REQUIREMENTS

SB 169

Sen. Deidra Henderson

This bill amends the open meetings act by requiring that if a person makes a presentation of materials at a meeting covered by the act, regarding an agenda item, the person must provide an electronic or hard copy of the materials to the public body to include in the minutes.

AMENDS: 52-4-203.

EMERGENCY FISCAL PROCEDURES FOR COUNTIES

SB 174

Sen. Deidra Henderson

This bill amends the county fiscal procedures act to permit a county, in responding to a natural disaster or fiscal emergency, to promptly amend the budget in a time frame permitted by the open meetings act. The county is required to provide newspaper notice and conduct a public hearing on the changes as soon as possible after the fact and adopt a resolution retroactively approving the emergency budget changes.

AMENDS: 17-36-27.

LOCAL FUNDING FOR RURAL HEALTH CARE AMENDMENTS

SB 176

Sen. Ralph Okerlund

This legislation creates for counties of the fifth class the authority to use a portion of the county sales tax to fund specific health care functions. This authority is already provided to counties of the sixth class. The legislation also authorizes a percent of the local sales tax to be imposed and the collections from that tax to be used to fund a long term care facility owned by a special service district. Current law allows that tax to be imposed and to be used to fund a facility owned by the county. As a result, the impact of the legislation is narrow and does not create a new taxing authority or process. The bill is needed in some smaller counties to assist with some social costs that fall to the county government.

AMENDS: 26-9-4, 59-12-801, 59-12-802, 59-12-804 and 59-12-805.

REPEALS: 59-12-803.

SEX OFFENDER REGISTRY AMENDMENTS

SB 177

Rep. Jerry Stevenson

This bill amends the Jurisdiction and Venue sections in Title 76, Chapter 1 and amends the Sex and Kidnap Offender Registry statute (77-41-105) to clarify jurisdiction and venue in circumstances where an offender had registered as required, but later changed his or her primary residence and thereafter did not re-register as required. Since the offender has three business days

after moving to re-register, the crime does not occur until the end of the third day, at which time the offender's whereabouts are unknown.

The amendments provide that in such circumstances the offense is considered to be committed at either the offender's most recent registered primary residence or at the location of the offender at the time he or she is apprehended. This bill will allow law enforcement to apply for a warrant in the county of the offender's most recent registered primary residence, even though the offender might not have been in the county on day three or later.

AMENDS: 76-1-201, 76-1-202 and 77-41-105.

PROCUREMENT REVISIONS

[SB 179](#)

Sen. Scott Jenkins

This is a lengthy bill (153 pages when printed out). It makes a number of changes to the procurement code as follows:

- 11-39-107 is amended in regards to “design-build” contracts, with restrictions on such contracts loosened (Lines 294-298).
- 52-4-205 is amended to allow closed meetings in certain procurement proceedings (364-382).
- 63G-6a-103 is amended to add new definitions for “architect-engineer services” (1180), “conducting procurement unit” (1190), “issuing procurement unit” (1308), “request for statement of qualifications” (1369), “sole source contract” (1395), “sole source procurement” (1396), “solicitation” (1399), and “statement of qualifications” (1417). Also, “responsible” is redefined to include financial solvency (1378).
- 63G-6a-104 is amended to include a definition for “cooperative purchasing organization”, which is an alliance of purchasers who combine their purchasing power (1480).
- 63G-6a-106 is amended to liberalize the procurement authority of local entities (1574-1598).
- 63G-6a-403 is amended to include definitions for “closed-ended prequalification process” and “open-ended prequalification process” and allows such processes in regards to architects, engineers and other professionals (1795-1815). There is also new language on information that is to be considered in the prequalification process (1840-1863).
- 63G-6a-406 is amended, with changes in (1) the information that must be provided in a public notice in connection with a solicitation, and (2) the manner of providing notice (1932-2004).
- 63G-6a-408 is amended to include penalties for abuses of the “small purchase” provisions (2082-2091). This is really meant to replace current 63G-6a-2305, which is repealed by this bill.
- 63G-6a-704 is amended to include a provision on rejecting proposals deemed non-responsive or irresponsible (2313).
- 63G-6a-707 is amended to include provisions allowing an individual who is not a member of the evaluation committee to review the scoring of the evaluation committee for errors. There is also an emphasis on “responsive and responsible” proposals (2359-2374). Changes are made to the manner of selecting a general contractor for construction projects (2382). Also, deliberations of the evaluation committee may be closed (2393).

- 63G-6a-705 is renumbered as 707.5 and amended to allow the evaluation committee “at any time” during the evaluation process to request and evaluate best and final offers from responsible offerors (2414).
- 63G-6a-708 is amended to add new language on information to be included in the justification statement, with an emphasis on the proposal that provides the “best value” (2433-2443). The new language also allows, in some circumstances, waivers of evaluation criterion (2484-2493).
- 63G-6a-709 is amended and allows the head of the procurement unit some flexibility in determination of a contract award (2506).
- 63G-6a-709.5 is amended to require publication of the justification statement and cost-benefit analysis (2543).
- 63G-6a-802 is amended to allow “trial use contracts” (i.e., items for trial use or testing to determine whether they will be of value) to be awarded without competition (2571). Such contracts may generally not exceed 18 months (2601).
- 63G-6a-904 is amended to include new requirements a procurement officer must meet before a vendor can be debarred or suspended from bids (2659-2721) and to add new language on rights of appeal (2743-2755).
- 63G-6a-1202 is repealed and reenacted to encourage standard contract clauses.
- 63G-6a-1205 is amended to add “a contract based on a rate table in accordance with industry standards” as an acceptable contract type (2920).
- 63G-6a-1502, 1503 and 1505 are amended to include some clarification on procurement of architect-engineer services (3082-3137).
- 63G-6a-1602 is amended in regards to the filing of protests, including some changes as to the time for filing a protest (3139).
- 63G-6a-1603 is amended, with changes on procedures the protest officer is to follow. The discretion of the protest officer in deciding whether to hold a hearing is reduced in such matters. Provisions are also added to (1) allow the officer’s deliberations to be held in private, (2) increase the amounts of bonds or security deposits (see 63G-6a-1703, below) and (3) emailing of notice of the decision (3185-3278).
- 63G-6a-1702 is amended to add new requirements for a person appealing a decision of a protest officer and allowing the proceedings of the appeals panel to be held in private (3281-3380).
- 63G-6a-1703 is amended in regards to security deposits, which now range from a minimum of \$20,000 to a maximum \$10,200,000, depending on the matter under appeal and the size of contract at issue (3383-3476).
- 63G-6a-1706 is amended to mandate dismissal of an appeal which fails to meet certain requirements (3477).
- 63G-6a-1802 is amended to add new language regarding an appeal from a decision of a procurement appeals panel to the Utah Court of Appeals. Among other changes, a person may not base an appeal on a ground not specified in the proceeding from which the appeal is taken (3486-3529).
- 63G-6a-2103 is amended to specify that one procurement unit may purchase any procurement item from another procurement unit without using a standard procurement process (3648-3677).
- Part 23 of the current code titled “Unlawful Conduct and Penalties” is repealed. Part 24 with the same title is enacted by SB 179 (3767-399). Those interested in determining the specific

differences between the old and new provisions should review both. It appears many are similar or identical. However, one change relates to the validity of contracts entered into in violation of these provisions. Current 63G-6a-2307 provides that a contract “is void and unenforceable” if it was awarded to a person who intentionally violated the provisions of the law. The new provisions in 63G-6a-2405 indicate that the governing body has discretion in such circumstances to declare a contract void and unenforceable (3953-3971)

AMENDS:

11-13-315	63G-6a-104	63G-6a-703	63G-6a-1603
11-39-103	63G-6a-106	63G-6a-704	63G-6a-1702
11-39-107	63G-6a-107	63G-6a-707	63G-6a-1703
52-4-205	63G-6a-108	63G-6a-708	63G-6a-1706
63B-2-102	63G-6a-204	63G-6a-709	63G-6a-1802
63B-3-102	63G-6a-303	63G-6a-709.5	63G-6a-1902
63B-4-102	63G-6a-402	63G-6a-802	63G-6a-1903
63B-5-102	63G-6a-403	63G-6a-904	63G-6a-1904
63B-6-102	63G-6a-404	63G-6a-1103	63G-6a-1906
63B-6-402	63G-6a-406	63G-6a-1105	63G-6a-1907
63B-7-102	63G-6a-408	63G-6a-1204	63G-6a-1910
63B-7-402	63G-6a-603	63G-6a-1205	63G-6a-2103
63B-8-102	63G-6a-606	63G-6a-1206	63G-6a-2105
63B-8-402	63G-6a-607	63G-6a-1402	67-16-4
63B-9-103	63G-6a-609	63G-6a-1502	67-16-5
63B-11-202	63G-6a-611	63G-6a-1503	67-16-5.3
63F-1-205	63G-6a-612	63G-6a-1505	67-16-5.6
63G-6a-102	63G-6a-702	63G-6a-1602	67-16-6
63G-6a-103			

ENACTS:

63G-6a-109	63G-6a-2402	63G-6a-2404	63G-6a-2406
63G-6a-2401	63G-6a-2403	63G-6a-2405	63G-6a-2407.

REPEALS AND REENACTS: 63G-6a-1202.

RENUMBERS AND AMENDS: 63G-6a-707.5 (Renumbered from 63G-6a-705).

REPEALS:

63G-6a-1803	63G-6a-2302	63G-6a-2305	63G-6a-2307
63G-6a-1905	63G-6a-2304.5	63G-6a-2306	63G-6a-2308
63G-6a-2301			

EFFECTIVE DATE: March 29, upon being signed by the Governor.

PROPERTY TAX MODIFICATIONS

SB 180

Sen. Wayne Harper

This bill amends the rate for the multicounty assessing and collecting levy (“levy”), the

allocation of revenue from the levy, requires the county to increase its county additional property tax rate to offset the decrease to the levy, provides the allocation of money in the Property Tax Valuation Agency Fund; consolidates additional county property tax administration levies, and amends funding for the Multicounty Appraisal Trust. It basically takes the State Auditor out of the process and equalizes the assessment and collection fees among the counties.

AMENDS: 59-2-911, 59-2-924, 59-2-924.2, 59-2-1601, 59-2-1602, 59-2-1603, 59-2-1605, 59-2-1606, 63H-1-102.

REPEALS: 59-2-1604,

EFFECTIVE DATE: This bill has retrospective operation to January 1, 2014.

LOCAL GOVERNMENT INSPECTION AMENDMENTS

SB 184

Sen. J. Stuart Adams

If a city or county collects an inspection fee, it must conduct that inspection within 3 business days or use the fees to hire an inspector to do so. If a town collects an inspection fee, the inspection must occur within a 'reasonable time.' This bill also disallows the rejection of a building permit unless you inform the applicant of the code provisions with which the application does not comply, and describe how it does not comply. Additionally, a certificate of occupancy cannot be withdrawn unless additional changes are made to the project that would require a building permit.

AMENDS: 10-5-132, 10-6-160, 15A-1-104 and 17-36-55.

LAW ENFORCEMENT TRANSPARENCY

SB 185

Sen. Diedre Henderson

This bill requires all state, county, municipal or other law enforcement agencies to annually report specific information to the Commission on Criminal and Juvenile Justice. The report is also to be submitted to the local governing body of the jurisdiction served by the law enforcement agency. The report must be submitted on or before April 30th in a format designated by CCJJ.

If the report is late, CCJJ will first make a courtesy call asking for the report. If the report is not submitted within 30 days after the courtesy call, CCJJ refers the agency to the House, the Senate and the Attorney General.

By August 1st of each year, CCJJ is to prepare a summary of all the reports it receives. That summary is to be given to the Speaker of the House and the President of the Senate for referral to any standing or interim committees with oversight of law enforcement and criminal justice. The summary report is also to be given to the Attorney General and is to be posted by August 15th on the Utah Open Government Website.

Here are the specifics:

(1) As used in this section:

- (a) (i) "Reportable incident" means:
 - (A) the deployment of a tactical group; or
 - (B) law enforcement officers who serve a search warrant after using forcible entry.
 - (ii) "Reportable incident" does not mean a forced cell entry at a corrections facility.
 - (b) "Tactical group" means a special unit, within a law enforcement agency, specifically trained and equipped to respond to critical, high-risk situations.
- (2) Beginning January 1, 2015, every state, county, municipal, or other law enforcement agency must, on or before April 30, submit an annual report to CCJJ containing the following information for the previous calendar year:
- (a) whether the law enforcement agency conducted one or more reportable incidents;
 - (b) the following information regarding each reportable incident:
 - (i) the organizational title of the agency, task force, or tactical group deployed;
 - (ii) the city, county, and zip code of the location where the reportable incident occurred;
 - (iii) the reason for the deployment;
 - (iv) the type of warrant obtained, if any;
 - (v) if a threat assessment was completed;
 - (vi) if a warrant was obtained, the name of the judge or magistrate who authorized the warrant;
 - (vii) the number of arrests made, if any;
 - (viii) if any evidence was seized;
 - (ix) if any property was seized, other than property that was seized as evidence;
 - (x) if a forcible entry was made;
 - (xi) if a firearm was discharged by a law enforcement officer, and, if so, approximately how many shots were fired by each officer;
 - (xii) if a weapon was brandished by a person other than the law enforcement officers;
 - (xiii) if a weapon was used by a person against the law enforcement officers and, if a firearm was used, the number or approximate number of shots fired by the person;
 - (xiv) the identity of any law enforcement agencies that participated or provided resources for the deployment;
 - (xv) if a person or domestic animal was injured or killed by a law enforcement officer; and
 - (xvi) if a law enforcement officer was injured or killed; and
 - (c) the number of arrest warrants served that required a forced entry as provided by Section 77-7-8 and were not served in conjunction with a search warrant that resulted in a reportable incident.
- (3) If a warrant is served by a multijurisdictional team of law enforcement officers, the reporting requirement in this section shall be the responsibility of the commanding agency or governing authority of the multijurisdictional team.

PRACTICE NOTE:

Because the first report under this bill must be submitted to CCJJ by April 30, 2015, for calendar year 2014, all law enforcement agencies and all attorneys advising law enforcement agencies should immediately prepare procedures for gathering and saving the required information. All required information for incidents that have already occurred since January 1, 2014, should immediately be documented for inclusion in next year's report.

ENACTS: 77-7-8.5.

LOCAL OPTION SALES TAX AMENDMENTS

SB 188

Sen. Deidre Henderson

This bill expands the use of local option sales and use taxes for airports, highways, and systems for public transit. Additional uses include class B and C roads, and traffic and pedestrian safety. It also provides that certain uses of a county, city, or town option sales and use tax for airports, highways, and systems for public transit must first be recommended by a metropolitan planning organization or council of governments. This bill takes effect on July 1, 2014.

AMENDS: 59-12-2218.

EFFECTIVE DATE: July 1, 2014.

LAW ENFORCEMENT EXEMPTION FOR MEDICAL INFORMATION

SB 198

Sen. Stuart Adams

Sheriffs and jail commanders and their legal advisors will want to be aware of this bill.

17-22-8.1. Disclosure of detainee medical clearance.

(1) A health care provider, as defined in Section 78B-3-403, who provides health care to a detainee before the detainee is booked into a county jail by a competent authority, is authorized to disclose to the competent authority whether a detainee is medically cleared for incarceration.

ENACTS: 17-22-8.1.

EXPUNGEMENT MODIFICATIONS

SB 201

Sen. Scott Jenkins

A person or agency authorized to view expunged records is prohibited from revealing or releasing any information obtained from the expunged records to anyone outside the court order or specific request, including distribution on a public website.

This bill deals with several expungement issues. Subsection 77-40-105(7) provides that persons who received a pardon from the Board of Pardons prior to May 14, of 2013, are entitled to an expungement order for all pardon crimes. This allowed for the disposition of a few cases which were not covered by last year's changes in the expungement statute allowing the Board to issue expungement orders.

The Department of Insurance, the Department of Commerce, and the Commission on Criminal and Juvenile Justice, for purposes of investigating applicants for judicial office, are included in the list of agencies allowed to access expunged files.

AMENDS: 77-27-5.1, 77-40-102, 77-40-105 and 77-40-109.

CONTROLLED SUBSTANCE PENALTY AMENDMENTS

[SB 205](#)

Sen. Lyle Hillyard

This bill prevents prosecutors from using multiple potential enhancements (for example, near a school, plus a prior, or plus in the presence of children) to raise any simple possession of a controlled substance offense above a second degree felony.

58-37-8....

- (15) *The application of any increase in penalty under this section to a violation of Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This Subsection (15) takes precedence over any conflicting provision of this section.*

AMENDS: 58-37-8.

TAX, FEE, OR CHARGE OFFENSE AND PENALTY AMENDMENTS

[SB 206](#)

Sen. Curtis Bramble

The bill clarifies the 3rd degree felony penalty language for failing to sign, file or otherwise do as required with a state tax return. Here is the amended language.

76-8-1101. Criminal offenses and penalties relating to revenue and taxation – Rulemaking authority – Statute of limitations.

- (1) (a) As provided in Section 59-1-401, criminal offenses and penalties are as provided in Subsections (1)(b) through (e).
- (c) (i) ~~[Any person who, with intent to evade any tax, fee, or charge as defined in Section 59-1-401 or requirement of Title 59, Revenue and Taxation, or any lawful requirement of the State Tax Commission,]~~ With respect to a tax, fee, or charge as defined in Section 59-1-401, any person who knowingly and intentionally, and without a reasonable good faith basis, fails to make, render, sign, or verify any return within the time required by law or to supply any information within the time required by law, or who makes, renders, signs, or verifies any false or fraudulent return or statement, or who supplies any false or fraudulent information, is guilty of a third degree felony.
- (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(c)(i), the penalty may not:
- (A) be less than \$1,000; or
 - (B) exceed \$5,000.

AMENDS: 59-1-401 and 76-8-1101.

INVASIVE SPECIES AMENDMENTS

[SB 212](#)

Sen. Peter Knudson

This is another step in DWR's effort to eradicate and prevent further infestation of the

dreaded Dreissena mussel.

This bill:

- authorizes the Division of Wildlife Resources to establish inspection stations to temporarily stop, detain and inspect a conveyance or equipment that may be contaminated with Dreissena mussel; and
- provides that a person who proceeds through an inspection station or administrative checkpoint during normal hours of operation without presenting a conveyance for inspection is guilty of a class B misdemeanor.
- "Conveyance" means a terrestrial or aquatic vehicle or a vehicle part that may carry or contain a Dreissena mussel and includes a motor vehicle, a vessel, a motorboat, a sailboat, a personal watercraft, a container, a trailer, a live well or a bilge area.

AMENDS: 23-27-201 and 23-27-301.

POLITICAL SUBDIVISION REVISIONS

SB 216

Sen. Karen Mayne

This bill applies to a county of the first class and addresses the status of the county's unincorporated areas. It temporarily suspends annexation and incorporation until Nov 2015; requires that SLCo study unincorporated area services, funding, and governance by December 2014; adds animal services, storm drains, traffic engineering, business licensing and building permits to the list of municipal-type services requiring funding solely from the unincorporated area; establishes a new local district to provide municipal services in SLCo; and provides for funding those services.

AMENDS: 17-34-1, 17B-1-213, 17B-1-214, 17B-1-502, 63I-2-210 and 63I-2-217.

ENACTS: 10-2-130, 17-15-30, 17B-2a-1101 to 1109.

INDIGENT COUNSEL IN JUVENILE COURT

SB 221

Sen. Todd Weiler

As a result of a choice by the drafting attorney at Office of Legislative Research this bill appears to be broad new language because of the "repeal" and "reenact" language. In reality, the scope of the bill is quite narrow. The legislation defines who is entitled to have counsel in juvenile court proceedings, and who is entitled to have court-appointed counsel in those proceedings. Under current law, the scope to the right to counsel is defined broadly and includes both the minor, and any adult who is involved with the case as a parent, guardian or custodian. The legislation will change that so that a court may appoint counsel only to a parent or legal guardian who is deemed to be indigent under Utah law. The legislation further limits the right to have counsel appointed to only those cases which are initiated by or are directly related to actions by the state or a political subdivision.

Counties pay for the appointed indigent defense counsel for parents and minors in juvenile court proceedings and this legislation is intended to narrow the use of the lawyers to just those cases

where a parent or child should be considered “entitled” to defense counsel.

The bill drafters tried to delve into a complex area of law and court process and make some small changes. Consequently, the language of the bill is substantially different from the current language although the effect should be minor. It will probably be challenged frequently in court proceedings and the section will need additional work to focus its effect. Nevertheless, the legislation should require very limited involvement by county counsel.

AMENDS: 78A-6-317.

REPEALS AND REENACTS: 78A-6-1111

AUTOMATIC LICENSE PLATE READER SYSTEM

SB 222

Sen. Todd Weiler

Provides that restrictions on the use of automatic license plate reader technology apply only to governmental entities.

Provides that a governmental entity may obtain, receive, or use **privately** held captured license plate data only:

- pursuant to a:
 - warrant sought and issued pursuant to the Rules of Criminal Procedure, or
 - a court order sought and issued pursuant to 41-6a-2005(2); and
- if the private automatic license plate reader system retains captured plate data for 30 days or fewer.

The other restrictions on the use of license plate reader technology by a governmental entity, the length of time data from a license plate reader may be retained by a governmental entity and the purposes for which the data may be used by a governmental entity remain unchanged from the statute’s initial enactment in 2013.

AMENDS: 41-6a-2002, 41-6a-2003, 41-6a-2004 and 41-6a-2005.

URBAN FARMING AMENDMENTS

SB 237

Sen. J. Stuart Adams

In the 2012, the Legislature enacted the Urban Farming Assessment Act, patterned after Utah’s Farmland Assessment Act which allows agricultural property (5 acres or more) to be valued for property tax purposes at a reduced rate based on its agricultural use, subject to a rollback tax should the status of the property change. The Urban Farming Assessment Act applies to parcels 2 acres or more in size. This bill modifies the Urban Farming Assessment Act to include certain counties of the second class and makes other technical changes.

AMENDS: 59-2-1702, 59-2-1703 and 59-2-1705.

COUNTY JAIL CONTRACTING AMENDMENTS

SB 241

Sen. Scott Jenkins

This legislation states that a county may release inmates from its jail—either probationers or persons on parole—if the state does not provide adequate funding to house those prisoners. The current law defines the adequate amount of funding as being the amount necessary to house the prisoners at 50% of the daily state incarceration rate. Essentially, the legislation says that a county may only be required to house inmates to the extent the Legislature appropriates funds to pay for their housing.

The legislation is the next step in a long term battle over the burden of caring for “state” inmates. Under current practice, jail management is left to the Sheriff who is authorized (sometimes required) to release inmates to address jail space issues. This legislation will enable a Sheriff, or jail commander to release inmates due also to lack of funding by the State.

AMENDS: 64-13e-104 and 64-13e-105.

MODIFICATIONS TO PROPERTY TAX

SB 244

Sen. Aaron Osmond

Would you like to receive your tax notice by email? Done. Through the persistent efforts of many – starting late in the legislative session – and with thanks to Senator Osmond, you can now elect to receive an electronic copy. This bill addresses the contents of certain property tax notices and authorizes a county treasurer to provide certain property tax notices by electronic mail if a taxpayer elects to receive the property tax notice by electronic mail.

AMENDS: 59-2-327, 59-2-506, 59-2-913, 59-2-924.1, 59-2-1317, 59-2-1331 and 59-2-1705.

INTERNET VOTING PILOT PROJECT AMENDMENTS

SB245

Sen. Curtis Bramble

Previously 20A-6-103 allowed counties selected by the Department of Defense to allow some overseas voters—those serving in the military, Public Health Service, Merchant Marine, and National Oceanic and Atmospheric Administration, and their spouses—and some other similar voters who meet the state’s eligibility requirements, to register to vote and to vote electronically as part of the Federal Voting Assistance Program pilot project, regardless of other state requirements. The amendments to 20A-6-103 delete the reference to the Federal Voting Assistance Program and provide that any county may allow these same voters and voters who have a disability, as defined in 42 USC § 12102(1), to register to vote and to vote electronically.

AMENDS: 20A-6-103.

PUBLIC DUTY DOCTRINE AMENDMENTS

[SB 250](#)

Sen. Curtis Bramble

This bill adds a provision to UCA 63G-7-202 providing that:

“A general duty that a governmental entity owes to the public does not create a specific duty to an individual member of the public, unless there is a special relationship between the governmental entity and the individual member of the public.”

This is a restatement of the common law public duty doctrine, probably added in response to the Utah Supreme Court ruling in *Francis v. State*, 2013 UT 43 (2013), a/k/a “the bear case”. The supreme court in *Francis* discussed the public duty doctrine and said virtually the same thing:

Under the public duty doctrine, the general duty that the government owes to the public does not give rise to a specific duty of care to individuals “unless there is some [special relationship] between the government agency and the individuals that makes it reasonable to impose a duty.” *Id.* at ¶ 25.

AMENDS: 63G-7-202.

DISTRACTED DRIVER AMENDMENTS

[SB 253](#)

Sen. Stephen Urquhart

This bill moves the offense of using a wireless telephone or electronic communication device from the Careless Driving (41-6a-1715) statute to the Prohibition on Using a Handheld Wireless Communication Device While Operating a Moving Motor Vehicle (41-6a-1716).

The bill amends the definition of handheld wireless communication device to now include ‘a handheld device used for the transfer of information without the use of electrical conductors or wires, wireless telephones, text messaging devices, laptops, and “any substantially similar communication device that is readily removable from the vehicle that is used to write, send, or read text or data through manual input”’ (all tablets currently on the market are included in the definition).

Under the amendment it is now prohibited to do any of the following while operating a **moving** motor vehicle:

- write, send, or read a written communication, including a text message, instant message and e-mail;
- dial a phone number;
- access the Internet;
- view or record video; and
- enter data into a handheld wireless communication device.

A person may still use a handheld wireless communication device while operating a moving motor vehicle:

- when engaging in voice communication (talking on the phone);
- during a medical emergency;
- when reporting or requesting assistance relating to a safety hazard;
- when reporting or requesting assistance relating to criminal activity

- view a global positioning or navigation device or application;
- operate hands-free or voice operated technology; and
- operate a system that is physically or electronically integrated into the motor vehicle (though it's unclear if the legislature intended to allow use of a handheld to operate those technologies, or if it meant use of those technologies, including looking at them and touching them, is still permitted).

Law enforcement officers and emergency service personnel may use a handheld wireless communication device while operating a moving motor vehicle when acting within the course and scope of their employment.

A person convicted of violating section 41-6a-1716 is guilty of a class C misdemeanor and subject to a maximum fine of \$100, or a class B misdemeanor if the person also inflicted serious bodily injury upon another as a proximate result of their conduct violating that section.

AMENDS: 41-6a-1715 and 41-6a-1716.

ASSET FORFEITURE AMENDMENTS

SB 256

Sen. Howard Stephenson

This bill began very scary, but with the work of Lana Taylor and others negotiating with the folks on the other side, the end result is not too terrible.

First,

(4) "Claimant" means any:

- (a) owner of property as defined in this section;*
- (b) interest holder as defined in this section; or*
- (c) person or entity who asserts a claim to any property seized for forfeiture under this title.*

This new definition may actually prove more helpful.

The main change the new law creates is this:

- (1) (a) The law enforcement agency shall promptly return seized property, and the prosecuting attorney may take no further action to effect the forfeiture of the property, unless within 75 days after the property is seized the prosecuting attorney:*
 - (i) files a criminal forfeiture indictment or information under Subsection 24-4-105 (2);*
 - (ii) obtains a restraining order under Subsection 24-4-105 (3);*
 - (iii) files a petition under Subsection 24-4-114 (1); or*
 - (iv) files a civil forfeiture complaint.*

So, the seizing agency will still have 60 days to be able to investigate the case and get the screening packet to the prosecutor, but realize that this new time limit will give the prosecutor only two more weeks to do one of the required things to keep the property from being returned automatically (file civil complaint, attach forfeiture allegation to criminal information, file for a turnover order, or get a restraining order).

Next,

- (2) (a) After ~~the~~ a complaint is filed, the prosecuting attorney shall serve a copy of the complaint and summons upon each claimant known to the prosecuting attorney within 30 days.
- (b) The prosecuting attorney is not required to serve a copy of the complaint or the summons upon any claimant who has disclaimed, in writing, an ownership interest in the seized property.

It will therefore still be very helpful to prosecutors if law enforcement is able to obtain a signed disclaimer of ownership if the person says they have no idea where the cash came from, as the prosecutor is then relieved of serving that person with the lawsuit.

Finally,

The bill also re-inserts the requirement that publication be made in a newspaper of general circulation for two weeks (not just publication on a public website).

The bill also re-inserts all of the requirements for a Petition to Turnover Property to the federal government that had existed before last year's bill, with a judge making the determination.

AMENDS: 24-1-102, 24-1-104, 24-1-105, 24-1-110, 24-1-114 and 24-1-115.

GOVERNMENTAL IMMUNITY ACT AMENDMENTS

[SB 267](#)

Sen. Todd Weiler

This bill amends provisions relating to the timeliness of a "notice of claim" against a governmental entity. It allows a claimant who in good faith files a notice of claim with an incorrect governmental entity an additional 30 days beyond the normal statutory time limit to refile the claim with the correct entity. The claimant has the burden to demonstrate that:

- (1) the incorrect filing was made in good faith,
- (2) was within the required statutory time limit, and
- (3) was within 30 days of the expiration of the time for filing.

The claimant must provide a copy of the notice of claim which was incorrectly filed and proof of the date on which it was filed.

AMENDS: 63G-7-401.

REDEVELOPMENT AGENCY MODIFICATIONS

[SB 275](#)

Sen. Curtis Bramble

This bill repeals a provision that restricts the Utah State Department of Transportation from closing or prohibiting a public road or highway crossing by a railroad or street railroad located within the boundaries of an urban renewal area that includes some or all of an inactive industrial site unless the Department of Transportation obtained advance written consent from the agency that created the

urban renewal area.

This bill does not appear to be material to redevelopment agencies, counties, or municipalities.

REPEALS: 17C-2-701.

JOINT RESOLUTION REGARDING QUALIFICATIONS OF STATE TAX COMMISSION MEMBERS

SJR 7

Sen. John L. Valentine

Be prepared this year for a proposal on your ballot to amend the Utah Constitution. This joint resolution of the Legislature proposes to amend the Utah Constitution relating to the State Tax Commission. The proposal is to eliminate a provision that limits membership on the State Tax Commission to no more than two members from the same political party and to authorize the legislature by statute to provide for the qualifications of State Tax Commission members. It directs the lieutenant governor to submit this proposal to voters.

IF PASSED BY THE VOTERS IN THE NOVEMBER, 2014 ELECTION, THIS WILL:

AMEND: Article XIII, Section 6, Utah Constitution.

EFFECTIVE DATE: If passed, it becomes effective January 1, 2015.

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