WOMEN'S STATE LEGISLATIVE COUNCIL OF UTAH

WSLC

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GENERAL SESSION

February 15, 2012

Program Topic 1: SB21 Changes to Environmental Quality Boards

Presented by: Energy/Natural Resources/Agriculture & Environment
Director: Hilarie Orman
Chair: Sandra Peel

Speakers: David Bird, Esq. – Govt. Relations & Natural Resources Attorney
Steve Erickson – Utah Audubon Council
Amanda Smith – Exec. Dir., Utah Dept. of Environmental Quality
Rep. Joel Briscoe (D) Dist. 25, SL & Summit Counties (SL east bench & western Summit County)

David Bird, speaking for **SB21**, said the state Dept. of Environmental Quality (DEQ) was created a few years ago as a division within the Health Department. It is now a stand-alone sector. Five citizen boards deal with problems regarding air, water, drinking water, radiation control, and solid & hazardous waste. These boards are advisory to the directors of the various environmental areas, working as liaisons between the citizen interest and the government agency. They had authority to set standards for after taking public input. Over time, the boards acquired adjudicative authority over appeals regarding permits. This created a potential conflict for boards, as they set rules for environmental quality, and then judged the implementation of them.

The potential conflict led to **SB21**. The bill would separate the rule making, standard setting, and public discussion function from the adjudication of individual permits. It would allow the boards to participate freely with the public in setting standards and rules.

Mr. Bird explained that a public entity requesting a permit would make application. The appropriate environmental division would evaluate it and make recommendation to the director for approval or denial. The director would make the decision on issuing the permit. If the applicant is not satisfied with the decision, an appeal can be filed. An Administrative Law Judge (ALJ) will review the appeal. The judge will make a recommendation to the Executive Director of the Department, who would make the final decision. The decision can be appealed to the courts.

SB21 is also, Mr. Bird said, an attempt to streamline the boards. Many interests would like representation. Some boards had grown too large. Under the bill, each board would have nine members. The bill was passed with amendments by the House and will go to the Senate for concurrence.

Steve Erickson noted several concerns of the environmental community, which believes industry factors into **SB21** more heavily than the environment. However, some concerns have been resolved. He hopes the bill will solve some problems with the operation of the boards.

Another of his concerns is the reduction of the boards to nine members. The environmental

community sees this as reducing public membership seats, while local government and industry doesn't lose seats. A particular concern is that a licensed physician with expertise in environmental effects on public health is not required to be on the Air Quality board.

Another concern is the funding required to hire independent ALJs, when the government already has in-house ALJs in the Attorney General's office. These ALJs also work for the DEQ. A legislative committee decision would be required to allocate those funds during the current session.

Rep. Briscoe, voicing his concerns, spoke about the number of board members. Since the Executive Director holds one seat, only eight are appointed. Industry representatives lost some seats, but the public lost a greater number. However, on a positive note, Rep. Briscoe believes the issues facing the boards will become more technical in nature, and the Executive Director can provide essential training to board members.

He indicated there is also a potential conflict of interest for the ALJs. They advise the DEQ in reaching its decisions, but also adjudicate the appeals of the decisions. This is one reason for hiring outside ALJs. The Executive Director of DEQ, Amanda Smith, is working to obtain funding for this purpose.

Amanda Smith, speaking for **HB21**, said she has worked on all five boards, and feels they should become a forum in which difficult issues can be vetted through robust public debate. Those who crafted **HB21** believe that removing the adjudication responsibility on the "back end" of policy decisions frees the boards to ask "the hard questions" during the public input process.

Explaining how the current adjudication process works, she said although the boards make final decisions on appeals, an ALJ is directly involved in evaluating the appeal. Under this system, the boards have never in three years disagreed with the ALJ. Under current statue, the other 40% already go directly from the ALJ back to the Executive Director.

Reported by Stuart Gygi

Program Topic 2: HB209 Utah Sovereign Lands

Presented by: **Energy/Natural Resources/Agriculture & Environment**
Director: **Hilarie Orman**
Chair: **Sandy Peel**

Speakers: **Rep. Fred Cox (R) District 32, Salt Lake County (West Valley); sponsor, HB209 Utah Lands Protection Act**
Rep. Brian King (D) District 28, Salt Lake County (East Bench/SLC); Minority Asst. Whip

Rep. Cox described his bill as one that would protect Utah lands. He cited a 1976 dispute wherein the federal government sought to issue oil and gas leases under Utah Lake. Utah brought suit and won in 1987. English Common Law states that land under "navigable bodies of water" is sovereign land. Utah argued that meant bodies of water existing at the time statehood was granted. The Supreme Court agreed.

Utah's state constitution contains provisions protecting sovereign public lands from being sold or converted to other uses. Rep. Cox said the federal government could decide lands yielded back to the state would not be similarly protected.

HB209 would designate all land received from the federal government as sovereign land. It would protect the current national parks in Utah by disallowing any substantial change in the management or use of them. It would also ensure that the School & Institutional Trust Lands Association (SITLA) trust fund would receive 5% of the proceeds from the sale of those lands. Rep. Cox believes the federal government

would be more likely to release federally owned land if the protections provided in this bill are in place.

Rep. Brian King said his mother once served as president of the organization. He is uneasy as To the potential unwanted consequences of **HB209**. Noting that Nevada has an even higher percentage of federally owned land, he acknowledged the western states' frustration with their inability to develop it as they see fit.

Rep. King said one problem with **HB209** resides in lines 46-46. They list several classifications of state sovereign lands as those "claimed" (rather than "owned") by the state. He believes this language puts the state on a collision course with the federal government.

Reported by Stuart Gygi

General Session II

Program Topic 1: HB33 Hours for Use of Fireworks

Presented by: **Energy/Natural Resources/Agriculture & Environment**
Director: **Hilarie Orman**
Chair: **Sandy Peel**

Speakers: **Rep. James Dunnigan (R) Dist. 39 Salt Lake County (Taylorsville); sponsor, HB33**
Tyson Watson – Olympus Fireworks *(unable to attend)*

Rep. Dunnigan said he first became aware of the need for this bill as his family returned from a family vacation. They were crossing the state line back into Utah from Wyoming, when they happened upon a police "sting" operation. Fireworks were being confiscated from consumers after being purchased at a nearby store in Evanston, just over the state line. He said he was immediately struck by the foolish, wasteful expenditure of law enforcement resources.

The bill he sponsored last year, HB 22 Fire Prevention and Fireworks Act Amendments, amended what legal fireworks could be sold in Utah. It resulted in $8M in additional fireworks sales, and $.5M in additional revenue for the state. Evanston was not pleased.

Also, representatives from various cities and counties have made complaints regarding their fireworks' noise. Difficulties have arisen, he said, due to noise ordinances not being standardized. The language in **HB33** effectively cuts in half the dates and times during the year when fireworks may be discharged.

Responding to questions, Rep. Dunnigan said it's still left to local government to determine *where* fireworks may be discharged. The state determines, types of fireworks and *when* they may be discharged. The Chinese New Year is a case in point, as that holiday is traditionally celebrated for two weeks. Firework stands will have times posted.

Reported by Pam Grange

Program Topic 2: HB86 Trespass on Private Property

Presented by: **Energy/Natural Resources/Agriculture & Environment**
Director: **Hilarie Orman**
Chair: **Sandy Peel**

Speaker: **Rep. Joel Briscoe (D) Dist. 25, SL & Summit Counties (SL east bench & western Summit County)**

Rep. Briscoe, briefly presenting **HB86**, said it was initiated by an incident in which a hunter, thinking he had stumbled onto an excellent hunting area, posted that information on facebook. As it turned out, the area was private property. Currently, hunters are exempt from most trespass rules.

As described, the bill would make it a class B misdemeanor "for a person to take wildlife or engage in wildlife activities on private land if the person has notice to not enter or remain on the land." Posting of private property, Rep. Briscoe said, should be done where people are most likely to enter or exit that property. **HB86** makes it easier to designate a property as "private," particularly with regard to signage. In essence, it redefines the concept of "No Trespassing" to promote respect for private property. Property owners can more easily exclude hunting from their land

Responding to questions, Rep. Briscoe said property must indicate trespassing and/or hunting is restricted wherever such signage would reasonably be expected to be seen. Also, a property owner who wishes to allow certain hunters to access a property for hunting may provide them with "hunting by permission cards." The Utah Division of Wildlife would provide these cards for any landowner requesting them.

Reported by Pam Grange

NOTE: *The WSLC Education Committee submitted Resolutions in support of two bills that were presented in recent General Sessions:*

SB119 *Resolution on Alcoholic Beverage Control Act Sampling Amendments*
SB32 *Breast Cancer Prevention Amendments*

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