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THE UTAH TAXPAYER

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UTOPIA Cities Approve More Bonding; Taxpayer Questions Go Unanswered

UTOPIA and seven of its member cities appear to be moving forward with another round of bonding for this failed venture. As previously reported in the Utah Taxpayer, UTOPIA is asking taxpayers in its member cities to backstop a third round of bonding, this time for $62 million.

Despite previous rounds of bonding totaling hundreds of millions of dollars, UTOPIA has failed to build out its network or provide services that a significant proportion of consumers are willing to pay for. This failure in the marketplace has meant that taxpayers are now paying approximately $12 million per year to repay UTOPIA's previous bonds.

Participating in the UIA

This third round of bonding differs in significant ways from UTOPIA's previous rounds of bonding. First, the bonds are now being offered by UTOPIA's sister organization, the Utah Infrastructure Agency (UIA). Whereas UTOPIA is composed of 11 cities who have agreed to repay UTOPIA's previous bonds, only nine of the UTOPIA cities – Brigham City, Layton, Centerville, West Valley City, Murray, Midvale, Orem, Lindon and Payson – joined the UIA. Tremonton and Perry declined to join.

This round of bonding will make UTOPIA no more successful than it has been so far.

The Taxpayers Association argued repeatedly against additional UTOPIA/UIA bonds. As we have participated in this discussion, several important points were never adequately addressed. Despite having paid thousands of dollars for a feasibility study of this planned round of bonding, UTOPIA has yet to explain to the public or their member city councils what competitive response incumbent providers will have, and how UTOPIA plans to counter that response. Without meaningful answers to that question, UTOPIA simply cannot explain how they plan to succeed in the marketplace.

Similarly, UTOPIA has yet to analyze the demographic profile of their target market, and how that demographic profile matches its member cities. If UTOPIA's customer demographic does not match the population of the neighborhoods they plan to target, this round of bonding will fail as surely as the previous rounds did.

Brigham City's Limitations

Although Brigham City's taxpayers have already bonded to build out their city, UTOPIA/UIA asked Brigham City to participate in this round of bonding as well. Initially, they asked Brigham City to backstop three percent of the total

Notice of Utah Taxpayers Association's Annual Meeting

All members of the Utah Taxpayers Association are invited to attend the Association's Annual Meeting, which will be held Friday, November 19, 2010 at 2:00 p.m. The meeting will be held at the offices of Holme Roberts & Owen, 299 South Main Street, Suite 1800, Salt Lake City, Utah. Nominations for the Board of Directors will be accepted from the general membership up until five days prior to the annual meeting.

NOVEMBER 2010
VOLUME 48

bond amount. Brigham City balked. Over the past several months, UTOPIA/UIA finally convinced Brigham City to join UIA, although Brigham City taxpayers would only provide 0.6 percent of the total backstop.

When the Brigham City Council voted on participating in this round of bonding, however, they added an additional condition. To offset the cost to Brigham City taxpayers of running fiber throughout the city, Brigham City wants UTOPIA/UIA to only receive the portion of the $3,000 hook up fee necessary to run fiber from the curb to the home. According to Brigham City's analysis, that figure is about $1,200. The remaining $1,800 would go to Brigham City.

The Payson Question

Payson has proven a difficult city for UTOPIA/UIA. While they agreed to join UIA, Payson voted not to participate in issuing the bonds. Like Brigham City, Payson was supposed to backstop three percent of this round of bonding. Surprisingly, UTOPIA/UIA has not engaged in the same protracted negotiations to preserve at least some portion of Payson's participation. Nor have the city councils of the rest of the UIA reconsidered participating, given the now larger proportion of the bonds they must backstop.

It is not yet clear what, if any, changes must be made to the documents approved by the seven UIA members who did not alter the documents provided by UTOPIA/UIA. The figures in those documents were all predicated on Payson's participation. Similarly, those figures do not reflect the changes Brigham City insisted on, nor have any other cities agreed to Brigham City's changes. While your Taxpayers Association has brought these changes to the attention of member cities, none of them seem to want to update the documents.

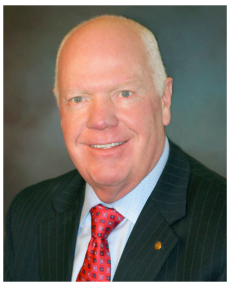
As pointed out earlier, Payson has declined to participate in this round of bonding. When Centerville learned of this change, they assumed that UTOPIA/UIA would simply reduce the total amount of the bonds sold. However, the authorizing documents are the only legal limit on how much UTOPIA/UIA can bond for. Since UTOPIA officials freely admit that this will NOT be their last round of bonding, it is difficult to imagine that UTOPIA/UIA will not use the full $62 million available.

UTOPIA Strategic Traunches

UTOPIA claims this round of bonding will be spent strategically. Unlike previous rounds, they claim they will sell the bonds in three separate "traunches." The first traunch will be for just $25 million. If UTOPIA/UIA is able to deploy that $25 million so that new subscribers pay for operations and the debt service on the new bonds, UTOPIA/UIA will draw down a second traunch of the bonds. And if the second traunch succeeds similarly, they will proceed to a third traunch, etc., until the $62 million is spent.

As of publication time, UTOPIA/UIA and their member cities have no plans to address the concerns the Taxpayers Association has raised. As we have previously said, we hope our concerns are unfounded. We hope taxpayers won't again find themselves paying for UTOPIA's gamble. Nevertheless, we remain convinced that this round of bonding will make UTOPIA no more successful than it has been so far. If we're right, this round of bonding will only mean taxpayers are paying off even more debt, without receiving equal value in return.

My Corner: The Accountability of The Profit Motive



Association President Howard Stephenson

For the past year, I have been a member of Utah's Privatization Policy Board. Under the leadership of chair Randy Simmons, we ask each department in Utah government what they do, and then evaluate whether those tasks are inherently governmental, or commercial. Following that evaluation, we recommend to the Governor and the Legislature which activities the private sector can properly do more efficiently than the state.

One issue inevitably raised by opponents of privatization is accountability. As long as a state agency performs the task, they claim, taxpayers and elected officials can hold the agency accountable for mistakes or failures. If the state lets the private sector run the show, the public loses all accountability.

Nothing could be further from the truth. Having spent nearly 20 years as a State Senator, I know all too well that elected officials are nearly powerless to hold public agencies accountable.

When a public agency fails, my colleagues and I convene hearings and demand answers. What happened? How did it happen? How can we prevent it from happening again?

Inevitably, we are told that the culprit is a lack of money. That answer takes many different forms, but more spending is almost ALWAYS the agencies' answer. If we had this or that or the other program, we could have prevented this problem.

Even on those rare occasions when some brave soul falls on his sword, and admits that he caused the problem, preventing the problem in the future still means more money.

Sometimes, the best solution is more money. But it's only sometimes; in my experience, more money is rarely the best solution.

The problem elected officials face in trying to hold agencies accountable is that agencies know more about their operations than we do. And they have every incentive to only share information that enhances their proposed solution.

It's not unlike the problem you face when getting your car fixed. When you talk to the mechanic, he tells you that fixing the problem will cost $500. Not knowing what's wrong, whether his solution will work etc., you spend $500. Maybe the problem goes away. Maybe it doesn't. Either way, the mechanic now has $500, and you don't.

Accountability in a privatization setting works entirely differently. When the state contracts with a private party to conduct a given service, we outline specific benchmark outcomes the contractor must meet. Traffic accidents must be cleared up within so many minutes. Restrooms at state parks must be cleaned out every so many hours. Etc., etc.

If the contractor fails to meet those benchmarks, we don't pay the contractor. And if the contractor consistently fails to meet those benchmarks, we find a new contractor. In either case, the private contractor has a substantial monetary reason to

perform.

Importantly, contracting with the private sector also eliminates risks for the state. Specifically, the contractor is responsible for containing costs. If costs exceed the revenue they receive from the state, the contractor takes a loss. They may ask to renegotiate the contract, but unless the state agrees to a new contract, they have to abide by the existing contract.

Some opponents of privatization argue that privatization inevitably leads to poorer quality. The private sector takes some of what the state pays them as profit, instead of putting that money into providing the service. Necessarily, they argue, the amount private companies take as profit cuts into the service they provide to the public.

This claim could not be more wrong. Profit is the private companies' incentive to meet and exceed the state's expectations. With competitors anxious to replace them, private companies must innovate to retain their contract. After all, earning a profit is only possible if they have the contract.

Just the opposite is true when the service is provided by the public sector. Public agencies increase their budgets by having more employees. The cost and benefit to the public of these additional employees are beside the point. The agency wants a bigger budget, so they ask for more employees. The public may not get additional benefits, but they will pay more.

Given the choice between a private company who takes a profit and can be fired, or a public agency with no profit that cannot be fired, I'll take the private company. I can hold the private sector accountable, because they know what they'll receive if they don't perform (nothing!).

2010 Election Results: Voters Approve Provo Bond and Amendment A; Eagle Mountain, West Valley and Kaysville Bonds Fail

The Utah Taxpayers Association endorsed Constitution Amendment A, eight candidates and opposed two bond proposals on the November 2nd ballot.

Amendment A

Voters overwhelming approved Amendment A, the Save Our Secret Ballot Amendment with 60 percent of the vote. The amendment was strongly supported by the Utah Taxpayers Association who called on all legislative candidates to endorse Amendment A. Over 120 legislators, candidates and community leaders joined the Taxpayers Association in endorsing Amendment A. South Carolina, South Dakota and Arizona all passed similar Save Our Secret Ballot measures.

Bonds Opposed By The Taxpayers Association

The Taxpayers Association opposed Eagle Mountain's $7 million aquatic bond, insisting that the aquatic center was unnecessary, poorly planned and the bond proposal wasted millions of dollars in interest payments. With a 2 to 1 margin, voters overwhelmingly rejected the proposal.

Provo proposed a $39 million recreation bond to replace three existing, functional facilities with a brand new recreation "Taj Mahal," complete with a waterslide, game rooms and spa. Your Taxpayers Association strongly opposed the proposal, but voters in Provo passed the bond with 60 percent of the vote.

Other Bonds

In addition to Eagle Mountain and Provo, your Taxpayers Association reviewed West Valley City's Parks and Trails Bond and Kaysville's Police Bond and remained neutral on both.

West Valley City proposed a $25 million general obligation bond to create a "village green" space and add new parks and trails to their community. Your Taxpayers Association remained neutral after weighing the need for additional parks and trails creation against the increased burden on taxpayers. West Valley City voters rejected the bond with 56 percent of the vote.

Kaysville proposed a $4.5 million bond to construct a new police station. The current police facility lacks adequate training space, modern safety features and seismic integrity to withstand a significant earthquake. Your Taxpayers Association weighed the need for the facility against the unnecessarily long repayment plan (20 years) and remained neutral on the proposal. Voters in Kaysville rejected the bond with 56 percent of the vote.

Candidate Endorsements

Your Taxpayers Association also evaluated Utah political candidates and endorsed eight legislative candidates. Of the eight endorsements, six candidates were elected or re-elected. David Butterfield (District 4), Jim Nielson (District 19), Ken Ivory (District 47) and Derek Brown (District 49) were elected to the Utah House of Representatives. Jason Epps (District 36) and William Clayton (District 46) were defeated. Senator Ben McAdams (District 2) and Senator Wayne Niederhauser

Kearns Finds Recreation Solution Without Tax Hike

This past June, Kearns proposed a $12 million recreation bond to expand their facility and build a cover for their fifty-meter pool. The bond was one of the most egregious proposals we'd seen, leaving $7 million of taxpayer money undesignated to be spent on pet projects, such as a lazy river, water slides and an indoor running track. Your Taxpayers Association strongly opposed the proposal.

Voters rejected the Kearns tax hike with over 55 percent of the vote. No longer able to spend taxpayer money, Kearns was forced to find another way to meet their recreation needs. Their latest solution will save taxpayer money instead of creating a tax hike.

Kearns has partnered with Jordan School District to split the cost of a $2 million soft-shell cover over its Olympic sized swimming pool. The $2 million price tag is less than half of the previous bond proposal and won't cost taxpayers an additional dime.

In addition, Jordan School District will use the pool to host the Copper Hills and West Jordan high school swim teams. Shifting the home swim meets of these teams to the Kearns pool should save millions more for taxpayers.

When taxpayers reject outlandish bond proposals, elected officials prove remarkably adept at identifying core needs and meeting those needs without a tax hike.

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Taxpayers Association Files Suit Over Restaurant Tax

Is Utah's Restaurant Tax Unconstitutional?

On October 22, your Utah Taxpayers Association and the Utah Restaurant Association filed suit against Utah County. Our complaint alleges that the restaurant tax unconstitutionally discriminates against restaurants.

The legal issue is whether the additional one percent sales tax on food sold by restaurants unfairly discriminates against restaurants, and is thus unconstitutional. For example, if you buy a breakfast burrito and OJ at McDonalds, you pay one percent more tax than if you purchase the exact same breakfast burrito and OJ from Maverik.

Under the Equal Protection clauses of both the Utah and U.S. Constitutions, taxing entities must tax similar items the same way. That clearly is not happening with the implementation of the restaurant tax. There is no legally meaningful distinction between prepared food sold by a restaurant and prepared food sold by a convenience store. From a tax perspective, they are the same items, and the state cannot constitutionally prefer one over the other.

If the court rules that the existing restaurant tax violates the U.S. and Utah Constitutions, we will partner with the legislature and the counties to craft a fair and equitable tax to replace the lost revenue. That tax would likely impose the lowest rate possible on the broadest possible base, a tax policy the Taxpayers Association advocates for all taxes.

In an ideal world, your Taxpayers Association would try to eliminate the restaurant tax. If the projects it funds are so important, counties should pay for them out of their property tax. However, counties promised to repay bond holders out of restaurant tax revenue. By broadening the base and lowering the rate, Utah could generate the same income for the bond holders that the current restaurant tax does. Therefore, the Taxpayers Association will only accept proposals that hold bond-holders harmless.

The Utah Legislature could moot the lawsuit, if the restaurant tax statute is amended to eliminate its unconstitutional elements. We do not want to waste Association dollars on an unnecessary lawsuit. We have worked for many years to fix the restaurant tax legislatively, yet pressure from counties has carried the day. Hopefully this year we can finally fix the restaurant tax.

Forbes Magazine: Utah Best Business and Career Climate

Tax Foundation: Utah 9th Best Business Tax Climate

Forbes Magazine ranked Utah as the "Best State for Business and Careers" in its fifth annual survey.

According to Forbes Magazine, despite nationally high unemployment rates and stagnant economic growth, Utah's economy has expanded by 3.5 percent over the past five years, three times faster than the national average. Utah's employment instead of shrinking has increased by 1.5 percent.

Forbes Magazine evaluates each state's business and career climate using six categories: costs, labor supply, regulatory environment, current economic climate, growth prospects and quality of life. Forbes noted Utah's low energy costs, which are 35 percent below the national average, Utah's excellent debt rating of triple-A, the educated labor force, high quality of life, low poverty rates and healthy populace.

In addition to the Forbes Magazine award, the Tax Foundation has ranked Utah 9th best in the country for its business tax climate. The Tax Foundation annually evaluates state's corporate taxes, individual income taxes, sales taxes, unemployment taxes and property taxes. Since 2006 when Utah was ranked as 18th in the nation, Utah has consistently improved its Tax Foundation ranking.

Utah is leading the nation by prioritizing fiscal responsibility and smart tax policy.