



# The Utah Taxpayer

A Publication of the Utah Taxpayers Association

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## Is Utah's Spending Limitation Law Toothless?

For 30 years Utahns have debated and voted on spending limitation proposals in the Legislature and at the ballot box. In his 1986 narrow re-election campaign Governor Norm Bangerter pledged that if re-elected he would get a spending limitation law through the legislature. He was re-elected and he kept his promise on spending caps. Unfortunately, the law has been amended over the years so it is now a limited limitation law. Utah's spending limit is not very effective as evidenced by the fact that state government spending has doubled in the past ten years, from \$5.7 billion in 1998 to \$11.5 billion in 2008. General/education fund expenditures, including earmarks, nearly doubled from \$3.1 billion to \$5.9 billion during the same time period. In recent years, the growth rate has been even higher.

Utah's spending limitation consists of two parts:

1. Determination of spending limit based on inflation and population growth.
2. Determination of non-exempt state spending that is subject to the limit

The single largest problem with Utah's spending limit is found in part two. As shown in the accompanying chart too much of the budget is exempt from the spending limit.

### Utah's Spending Limit: Exempt Expenditures

Budget Item	FY2008	FY2009
Education Fund Total	3,511,033,300	3,232,264,900
General Fund Total	2,273,144,100	2,155,729,200
General Fund Transfers	147,959,300	81,223,800
Total Education/General Fund	5,932,136,700	5,469,217,900
Total expenditures	11,478,201,400	11,027,740,800
<b>Exempt Expenditures</b>		
EF: K-12 operations	2,516,646,500	2,558,865,200
EF: K-12 capital	77,288,900	42,288,900
EF: Higher Education Capital	78,041,000	25,000,000
EF: Tax Commission	27,586,900	21,005,800
EF: UCAT/UEN in USHE for K-12 students	33,310,600	36,343,900
EF: Debt Service	17,164,300	17,164,300
GF: Transportation	494,490,000	98,000,000
GF: Exempt Capital	175,813,600	81,000,000
GF: Debt Service	51,679,700	37,679,700
GF: Revenue Bond Debt Service	9,954,300	9,925,600
GF: Emergency Expenditures	6,000,000	0
Total Exempt	3,487,975,800	2,927,273,400
Total Subject to Limit	2,444,160,900	2,541,944,500
% of total EF/GF subject to limit	41.20%	46.48%
% of total budget subject to limit	21.29%	23.05%

Source: Governors Office of Planning and Budget; additional calculations by Utah Taxpayers Association

In FY2009, only 46.48% of education/general fund expenditures is subject to the state spending limit, and only 23.05% of the total budget is subject to the spending limit.

State general fund expenditures for transportation have been skyrocketing over the years. In FY2008, Utah state government will spend \$788 million in general fund money for transportation, up from virtually nothing in 1990 when the state relied mainly on user fees like gas taxes. If local sales taxes earmarked for roads and mass transit are included, the amount increases to nearly \$1 billion. Transportation plays a major role in economic development, but the Utah Legislature needs to make sure that transportation dollars are being spent cost effectively.

First, Congestion pricing would be a great place to start. Utah will end up spending fewer tax dollars and reducing more congestion if the Legislature relies on congestion pricing instead of general revenues such as sales taxes.

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*Unfortunately for Utah teachers and taxpayers, the Tenth Circuit Court of Appeals obliged, and the UEA resumed extracting political dollars from teachers' paychecks.*

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Second, Utah needs to improve the prioritization process for roads and rails projects. Instead of separately prioritizing road and rail projects, road and rail projects need to be combined into one prioritization process with the basis being cost-effectiveness of reducing congestion.

These are common sense proposals, and it's time that the Utah Legislature adopt these before we start seeing some serious tax increases and more out-of-control government growth.



## **My Corner - by Howard Stephenson Of Subsidies, Unions and Politics: Why the Supreme Court's Ruling in the Yursa Case Could Change Utah Politics**

Utah's most important political event in of the past 10 years has gone almost completely unnoticed. For years the UEA's political action committee was the most powerful political organization, because it had more money than any other Utah political organization. Their prowess in fundraising stemmed from the subsidized automatic deduction system they used to extract millions upon millions of dollars from Utah teachers' paychecks for political purposes. Most appalling, they rarely asked the donating teachers if they supported the union's politics, let alone whether they wanted to financially support those politics.

When the Legislature prohibited the state from extracting political donations, the UEA's political fundraising tanked. Between 1999 and 2003, the UEA used payroll deductions to collect an average of \$133,283 annually in small contribution political donations. Between January and November of 2004, after paycheck protection prevented the union from having the state extract its political donations, the UEA collected a total of just \$30,513.70. Instead of convincing their members that the union's politics deserve donations from teachers' family checkbooks, they ran to court, hoping a union-friendly judge would declare the law unconstitutional.

Unfortunately for Utah teachers and taxpayers, the Tenth Circuit Court of Appeals obliged, and the UEA resumed extracting political dollars from teachers' paychecks. By 2007, after the court ruled Utah's paycheck protection plan unconstitutional and Utah stopped enforcing it, the union's PAC collections went up 260% to \$79,267.02.

Utah did not appeal the Tenth Circuit's decision, but Idaho and Ohio passed similar paycheck protection laws. The teachers' unions in those states challenged the law in court. The Sixth Circuit Court of Appeals upheld Ohio's paycheck protection law, while the Ninth Circuit Court of Appeals struck down the Idaho law.

Idaho asked the U.S. Supreme Court to review the Ninth Circuit ruling. Because the Idaho and Utah laws are nearly identical, the Utah Taxpayers Association filed a brief urging the Supreme Court to hear the case. Unless the Supreme Court clarifies the status of paycheck protection laws under the U.S. Constitution, the Taxpayers' brief argued, what is unconstitutional in Idaho or Utah will be constitutional in Ohio.

Recognizing the problems demonstrated by the Taxpayers' brief, the Supreme Court agreed to hear the Idaho case, Pocatello Education Association v. Yursa. Because Idaho's paycheck protection law parallels Utah's law, the Tenth Circuit vacated their decision, pending the Supreme Court's decision. In other words, the Tenth Circuit Court agreed that the Supreme Court's decision in the Idaho case would dictate the fate of Utah's law.

Once the Supreme Court agreed to hear the Idaho case, your Taxpayers Association filed an amicus brief with the Supreme Court, joined by the National Right to Work Legal Defense Foundation, the National Federation of Independent Business Small Business Legal Center and the Sutherland Institute. This brief explained why the Supreme Court should uphold the Idaho paycheck protection law, and thus also uphold the Utah law.

The amicus brief argued that government collection of political contributions is subject to the free speech provisions of the First Amendment. However, we also argued that the state cannot compel private speech, that is, it cannot compel taxpayers to support the political speech of the teachers unions. The Ninth and Tenth Circuit opinions ignored the fact that state and local taxes fund the systems that unions use to extract political donations from teachers' paychecks. That taxpayer funding means that the payroll system is subject to state regulation, and that First Amendment protections apply, including the protection against compelled speech.

**Quote of the Month #1**  
***"I'll probably vote for these too . . . But I'm getting tired of paying twice - once with my annual property tax check and once at the gate."***

Columnist Rebecca Walsh endorsing and complaining about the zoo and aviary bonds that were placed on the ballot by the S.L. County Council.

Source: S.L. Tribune July 17, 2008

*With UEA fundraising on the rise, the balance of power has started to shift towards tax and spend liberals like the union.*

*The U.S. corporate income tax rate of 39.3% – which includes federal and state/local rates and accounts for the federal deductibility of state corporate income taxes –second only to Japan which has a slightly higher rate of 39.5%.*

*The Wall Street Journal reports that a new OECD study identifies corporate income taxes as the most detrimental to economic growth followed by individual income taxes. According to the OECD, residential property taxes are the least detrimental to economic growth.*

Under the Supreme Court’s *Abood v. Detroit Board of Education* and *Lehnert v. Ferris Faculty Association* cases, the Constitution “prohibits teachers unions from requiring objecting taxpayers to contribute” to political causes they “may oppose.”

Finally, paycheck protection plans like those in Idaho, Utah and Ohio do not violate members of teachers unions constitutional rights. Although paycheck protection laws make it more difficult for unions to collect political money, they do not prevent employees or their associations from collecting political donations. Members of teachers unions don’t need taxpayer subsidies to support union politics; they can do it voluntarily, on their own without the subsidy.

With UEA fundraising on the rise, the balance of power has started to shift towards tax and spend liberals like the union. But if the Supreme Court agrees with the Taxpayers Association and follows the clear language of their own rulings, unions will again have to persuade their members that the union’s politics are worth supporting financially. If history is any guide, the union won’t succeed.

## Corporate Income Taxes Get Competitive

**Reports from the Tax Foundation, OECD, World Bank, and the Utah Taxpayers Association**

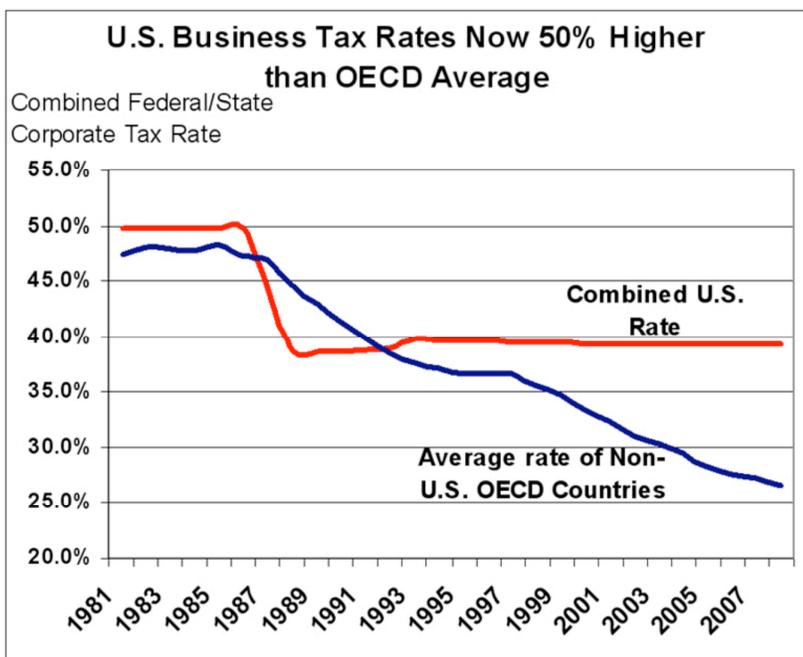
The non-partisan, non-profit Tax Foundation recently issued a study comparing corporate income tax rates in U.S. and the rest of the developed world. The results are not good.

- The U.S. corporate income tax rate of 39.3% – which includes federal and state/local rates and accounts for the federal deductibility of state corporate income taxes –second only to Japan which has a slightly higher rate of 39.5%.

- The U.S. corporate income tax rate is 50% higher than the rate for the other 28 developed countries.

- The rest of the developed world continues to decrease its corporate income tax rate. In just one year, the average OECD (Organization for Economic Co-operation and Development) corporate income tax rate decreased one full percentage point from 27.6% to 26.6%.

- Ireland, the fast-growing Celtic Tiger, has the lowest corporate income tax rate in the OECD at 12.5%.



Source: Tax Foundation

As reported by the Tax Foundation, World Bank data indicate that non-OECD countries are cutting their corporate income tax rates as well.

- Bulgaria, from 15% to 10%
- Turkey, from 30% to 20%
- South Africa, from 12.5% to 10%
- Columbia, from 35% to 34%
- Israel, from 31% to 29%
- Malaysia, from 28% to 27%

The *Wall Street Journal* reports that a new OECD study identifies corporate income taxes as the most detrimental to economic growth followed by individual income taxes. According to the OECD, residential property taxes are the least detrimental to economic growth.

### What’s happening at the state level in the U.S.?

State corporate income tax rates have remained stable for several years. However, states have been cutting corporate income taxes by increasing sales factor weighting in apportionment formulas. Increasing sales factor weightings reduces taxes on export-oriented industries such as manufacturing, IT, and natural resources. Increasing exports (or similarly, supplanting imports) and increasing productivity are the key components in economic growth.

The Utah Taxpayers Association has been tracking changes in state corporate income tax apportionment formulas for several years. In 1993, the average sales factor weighting was 49%. By 2008,

the average sales factor weighting had increased to 67%. In recent years, Utah has increased its sales factor weighting from 33% (evenly weighted three-factor) to 50% (double-weighted sales). Even with the recent increase in sales factor weighting, Utah still trails the national average.

For exporting companies, an apportionment formula with heavily weighted sales factor can offset a high corporate income tax rate. Iowa, for example, has the highest state corporate income tax rate in the U.S. at 12% but uses an apportionment formula with 100% sales factor weighting. Therefore, despite the high nominal corporate income tax rate, Iowa companies that export 100% of their production pay no Iowa corporate income tax.

## Districts and Charters Submit Disappointing Performance Pay Proposals

Thirty-seven of Utah's 40 school districts, 44 of Utah's nearly 70 charter schools, and the Utah Schools for the Deaf and Blind submitted performance pay proposals to the Utah State Board of Education last month. The purpose of performance pay is to reward teachers for increased student achievement. Unfortunately, most of these proposals are seriously deficient, and most of them appear to be heading for approval.

### Background

In the 2008 General Session, the Utah Legislature passed SB281, a bill that provided \$20 million in one-time money to districts and charter schools to fund performance pay programs that were approved by the state school board. If every school district and charter school applied for the one-time money and each proposal was approved, the funding would amount to \$36 per student. On a per educator basis, the amount would be about \$800, if every classroom teacher qualified for the bonus and no other employees were eligible.

The Utah Taxpayers Association supports the principle of paying teachers more based on student performance. Performance pay is commonplace in private sector professions.

Teachers unions have traditionally opposed performance pay programs because some teachers may be assigned students that are higher or lower achieving than others. However, performance pay programs can account for these disparities by compensating teachers based on student gains during the school year.

### Problems with Proposals

The proposed performance pay plans typically have the following problems

1. Most of the proposals do not specifically state upfront how much student gains would need to be before teachers could get performance bonuses. Most of the proposals simply stated these goals would be set at later date.
2. Too much emphasis is placed on "inputs" such as professional development, surveys, self-assessments, "Professional Learning Communities", and not enough emphasis is placed on "outputs" (i.e. student performance).

In fact, many of the "performance" criteria are based on things teachers are already expected to do, such as prepare lesson plans, attend meetings, and show up to work regularly and punctually.

A handful of proposals attempted to create incentives for teachers to increase student performance. For example, some proposals tie bonuses to the percent of students reaching certain performance levels, such as 80% of students meeting yearly goals on DIBELS assessment or an overall grade level increase of ten percentile points. Others, like the accompanying example, tie bonuses to the amount of academic growth that each student achieves.

Growth per student	Points
Less than one year	0
1 to 1.1 years' growth	10
1.1 to 1.25 year's growth	25
More than 1.25 year's growth	40

Although there are some concerns that quantifying student academic growth in terms of years is difficult, this type of proposal at least attempts to reward teachers for student academic gains.

Nevertheless, a majority of the proposals had little or no concrete performance gain goals. SB281, the bill that created the performance pay pilot program, was written loosely enough that all or nearly all of the proposals will probably be approved.

## Hogle Zoo Bond to Appear on November Ballot

### County Council caves to Democrat pressure

Hogle Zoo's quest for taxpayer subsidies never ends. In August 2007 the County Council rejected the Zoo's \$65 million bond request, because county taxpayers face so many other pressing matters. The challenges facing Salt Lake County taxpayers have only increased—school building equalization, Mountain View Corridor, jail facilities, etc.—but the Zoo again brought their bond proposal to the County Council this year.

On August 5, the county council voted to approve the bond request, with one condition. Even if voters approve the Zoo's \$65 million bond, the Zoo would have to raise \$20 million from private

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sources before they could receive the bond money. Despite having previously told their board, including County Councilman Jeff Allen, that obtaining these private donations would be easy, Zoo officials balked. They now claimed that the requirement to raise this money was too onerous, and threatened to withdraw the proposal from the ballot entirely.

Unfortunately for taxpayers, County Council Republicans refused to stand firm. On the very day they voted to increase expenditures by reopening a portion of Oxbow Jail, they withdrew the earlier bond proposal, and replaced it with a less taxpayer-friendly proposal. Under this new proposal, the Zoo can obtain \$35 million in bonds if, first, voters don't vote against the bond this fall, and second, if the Zoo raises \$11 million from private donations.

The Zoo has agreed not to seek another bond for the next five years, but that concession did nothing to protect taxpayers. With \$35 million in taxpayer bonds already in the bag, the Zoo would have waited at least five years anyway. Salt Lake County taxpayers have every reason to be upset with the eight County Council members—Randy Horiuchi, Jenny Wilson, Jim Bradley, Joe Hatch, Mark Crockett, Jeff Allen, Marv Hendrickson and Michael Jensen—who supported this so-called compromise. Councilman Dave Wilde was the only fiscal conservative on this issue – he voted no.

Unfortunately, Salt Lake County voters will go to the polls in November voting on the Zoo Bond before they know the Tax impacts of school building equalization and increased highway funding proposals.

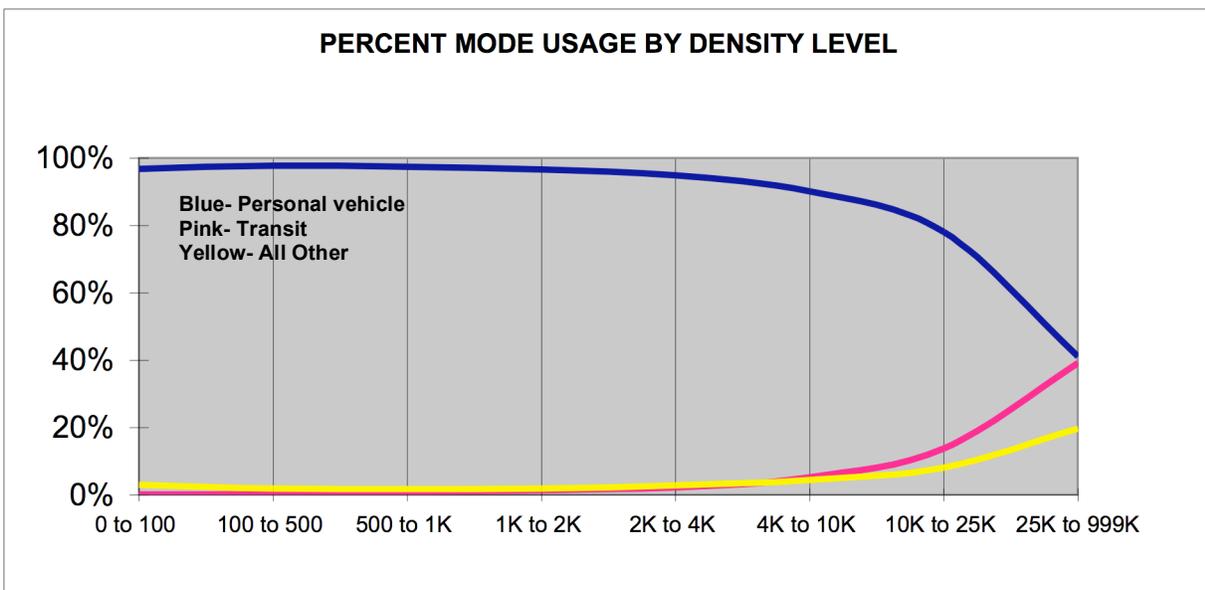
### Utah's Population Density Makes Mass Transit Difficult

Utah's transportation discussion occurs along many lines: transit vs. roads, tolls vs. no tolls, sales taxes vs. user fees vs. gas taxes, etc. One of the most misunderstood elements of the discussion is the effectiveness of transit in reducing congestion.

According to *Commuting in America III*, one of the most comprehensive summaries of commuting and demographic patterns in the country, transit can effectively mitigate congestion. For example, 24% of New York commuters use transit. In Washington, D.C., 33% of commuters rely on transit. In most other U.S. cities, commuters rarely use transit options, even where they are available. After D.C. and New York, the state with the next highest proportion of commuters using transit is New Jersey, where less than 10% of commuters rely on transit.

Two factors, population density (people per square mile) and metropolitan population, predominate in determining whether commuters rely on transit or private vehicles. According to *Commuting in America III*, the key metropolitan population threshold is 5 million. Utah's population is just over half of that threshold, so this analysis compares Utah's population density with commuting statistics.

**Percent of Commuters using private vehicles, transit, and other modes of transportation, by population density**



Source: *Commuting in America III*, based on data from Census 2000

As the graph indicates, commuters using transit do not even register as 5% of total commuters until population density rises to nearly 10,000 people per square mile. In less dense areas, private vehicles comprise the vast majority of commuters. Once density approaches 10,000, a large number of commuters switch from private vehicles to transit. In other words, transit can mitigate traffic congestion, but only in the very dense urban areas.

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Since 1922

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*As this analysis indicates, proposals to expand Utah's transit system require careful scrutiny. Utah's demographics simply don't offer great hope that transit will attract a significant proportion of the state's commuters.*

Tables 1 and 2 show the population density of several American and European metropolitan areas with substantial transit systems, as well as the density of several Utah cities. Not only do the European and American cities have significantly greater population, but their densities are much higher than any Utah city. Unsurprisingly, commuters in these dense cities use transit much more than commuters in Utah.

**Table 1: Population density of major U.S. and European cities**

City	Density*
New York City	27,147
Paris	24,948
Chicago	12,470
London	12,331
Boston	12,327
Berlin	9,921
Washington DC	9,015

**Table 2: Population density of several Utah cities**

City	Density*
Taylorsville	5,376
Orem	4,573
Sandy	4,224
Ogden	3,068
Provo	2,653
Salt Lake City	1,666

Source: Wikipedia.org

\* Residents per square mile

Utah's transportation policy makers must consider these relationships in evaluating how to allocate limited transportation dollars. To keep Utah economically competitive, policy makers must focus resources on projects that reduce congestion. As this analysis indicates, proposals to expand Utah's transit system require careful scrutiny. Utah's demographics simply don't offer great hope that transit will attract a significant proportion of the state's commuters.