



THE UTAH TAXPAYER

A PUBLICATION OF THE UTAH TAXPAYERS ASSOCIATION

Association's 2013 Legislative Agenda

During the 2013 Session, your Taxpayers Association will prioritize several important bills, like Senator Wayne Harper's SB 35 (Property taxation of business personal property) and Senator Howard Stephenson's SB 34 (Special election date for ballot propositions). Other important bills that haven't yet been published, but which the Taxpayers Association supports, include reducing the incentive to raise taxes by restoring the full sales tax on food, improving Utah's privatization process, and ensuring that interlocal agencies follow clear fiscal and transparency procedures.

SB 35 - Property Taxation of Business Personal Property

Each spring small business owners complete their business personal property inventory and submit it to their resident county. In some cases, the process is quick and painless. Typically they have personal property worth less than \$3500. In other cases, the process is painful and time consuming.

Businesses whose personal property is worth less than \$3500 do not have to pay property tax on that personal property. Because property taxes on business personal property can hinder the important work of growing Utah's small businesses, Senator Harper wants to increase the threshold to \$10,000. That will allow more small businesses to spend their time growing their business, and less time filling out government paperwork.

SB 34 - Special Election Date for Ballot Propositions

For years the Taxpayers Association has worked to make sure local governments seeking voter approval of bonds place their bond election on the November election. Turnout in November elections is at least twice as high as it is in the June primary election, which means a much higher proportion of the electorate decides whether to raise property taxes to pay for the proposed project. In many cases local governments heed our recommendation, but in other instances local governments seem determined to hold bond elections in June.

The Revenue and Taxation Interim committee listened to these competing arguments, and the result is the committee's SB 34. Under SB 34, bond elections must be held at the November general election. While local governments express concerns about the need for bonds during emergencies, in practice too many local governments use the primary election just because voter turnout is low, making it easier for bond supporters to win the election. It is time to put an end to this practice.

Privatization

In 2008, Utah revamped the state's Privatization Policy Board (PPB). This revamp balanced the board's membership between likely supporters and opponents of privatization. The 2008 legislation also authorized them to inventory what state agencies do, and determine whether each activity is an "inherently governmental activity" or a "competitive activity."

During the past several years, USU professor Randy Simmons has chaired the PPB, and led serious discussions about savings available to the state by getting out of the golf business, experimenting with private operation of some state parks, the degree to which the state should maintain or rent its own fleet of cars, and a host of other issues.

However, the PPB has not succeeded in its goals, in large measure because it has lacked staff dedicated to its work. During the past year, the PPB unanimously recommended that the Legislature provide significant staff funding for the Board.

JANUARY 2013 VOLUME 38



My Corner: Blended Learning 2.0

Page 2



Update: Court Rules Against Taxpayers in Restaurant Tax Case

Page 3



Profiling Legislative Chairs: Senators Reid and Henderson

Page 3



Guest Commentary by Paul Avelar from the Institute for Justice

Page 4



Upcoming Taxpayers Association Events

Page 5

ASSOCIATION STAFF

Howard Stephenson	President
Royce Van Tassell	Vice President
Chase Everton	Research Analyst
Sophie Mickelsen	Executive Assistant

EXECUTIVE COMMITTEE

James Hewlett	Chairman
Kent Stanger	Vice Chair
Eric Isom	Secretary
Mike Edmonds	Treasurer
Morris Jackson	Legislative Chair
John Ward	Immediate Past Chair
H. Val Hafen	At Large
Max Miller	At Large

We look forward to the 2013 Legislature significantly improving the process for getting state government out of the business of business.

Transparency in Interlocal entities

Local governments form "interlocal" entities so they can jointly pursue common projects. Perhaps Utah's most famous interlocal is UTOPIA, which is composed of 11 pledging member cities with an eye towards providing fiber optic cables to every home and business in their respective cities. However, interlocals exist throughout Utah, providing everything from police and fire service to TV camera trucks.

Two recent audits by the Legislative Auditor General highlighted the lack of clarity surrounding interlocal agencies. As previously noted in *The Utah Taxpayer*, the legislative audit of UTOPIA found gaping problems in excluding the public

from even listening to their executive committee's deliberations, and in not following the State's Fiscal Procedures Act.

A December 2012 legislative audit of the "Community Education Channel Agency" found serious questions in the interlocal agency's failure to abide by appropriate fiscal procedures, and statutory vagueness about which set of fiscal procedures were appropriate. It also documented significant deviations from the agency's stated purpose of providing local broadcasting, and instead competed with private businesses for broadcasting events around the intermountain west.

We will address these systemic problems by clarifying when interlocal agencies must follow the Open and Public Meetings Act, and by more clearly identifying the fiscal procedures these agencies must follow.

My Corner: Blended Learning 2.0 Paying Teachers as Other Professionals - Empowering Students as Self-Directed Learners



Association President
Howard Stephenson

I recently attended a conference on improving teacher quality in the public schools. National experts described the need for better preparation in colleges of education, high quality teacher development for educators already in the classroom, and tiered levels of teaching professionals similar to Finland's system. One expert stated that teachers today typically come from the bottom performing quartile of college students. Another stated that only one of the top ten universities in

the United States has an undergraduate teacher college.

Two teachers of the year spoke of success they were having in the classroom in two innovative school models in different parts of the country. Among their approaches, one teacher described taking texts from students as late as 11:00 p.m. Another told of coming to school on Saturdays to prepare his lessons for the coming week.

When my time to speak came, I expressed appreciation for the two exemplary teachers and noted that their extraordinary personal sacrifices for their students were admirable, but questioned whether their approach was scalable for married teachers with family demands. I observed that the elephant in the room relating to low teacher quality and high turnover is that teaching in America is merely seasonal work. How can we expect to attract the best and brightest when teachers are laid off for more than a third of the year without compensation? Would accounting, law, engineering, or architecture firms attract high quality candidates if employees were forced into unemployment every year?

I then told the conference attendees of legislation in the coming session of the Utah Legislature to create a pilot for World Class Student Centered Learning which would pay

teachers 50% more by teaching three semesters instead of two. Because each teacher would be performing the work of one and a half traditional teachers, there would also be savings of health insurance costs equivalent to 44 paid days. With this money, teachers could be treated like other professionals and receive 10 paid holidays and up to four weeks of paid vacation. Instead of starting at \$33,000 annually, these teachers would start at \$50,000, at no additional cost to taxpayers! What's more, because buildings would be utilized all year, growing districts could avoid tax hikes for new buildings.

Students too would benefit immensely from this model. Each student whose parents opted into the pilot would be always learning, always earning credit - 24/7/365. With the additional time, students would be engaged in significantly more self-directed learning. Every student would have at least one-third of their expanded education opportunities provided through virtual learning through the use of computer assisted learning software and apps designed to provide individualized instruction for skill-building and obtaining content knowledge, instead of the 19th-century manual methods of lecture and drill. All students would graduate high school with an associate's degree and/or a career or technical license or certificate. Students would be promoted only on the basis of competency, instead of being advanced without proficiency as is currently the case for too many students.

I told the attendees that I have been meeting with a working group of about 50 educators, parents, business leaders and legislators in drafting the legislation for at least one school district and one charter school to provide such a pilot for students kindergarten through 12th grade. There is already tremendous excitement about schools competing to qualify for the pilot. Students and teachers would also compete to be in the model program.

As I explained the legislation to the national conference attendees, there was a palpable excitement in the room and one of the teachers of the year announced to the audience, "If Utah passes that pilot, I'm moving to Utah to teach."

Hopefully the Utah Legislature will be as excited as teachers are about this prospect for moving public education into the 21st Century.

UPDATE: Court Rules Against Taxpayers in Restaurant Tax Case

As noted in the November 2012 edition of The Utah Taxpayer, your Utah Taxpayers Association took Utah county to court over the constitutionality of the Restaurant Tax. Because this one percent tax on sales of prepared food at restaurants does not apply to sales of the exact same food at other similarly situated retail establishments, we argued this tax unconstitutionally prefers some food providers over others.

At the oral arguments over our motion for summary judgment, Judge John Paul Kennedy seemed sympathetic to our argument. Specifically, it was difficult for representatives of the counties to explain to his satisfaction why a sandwich and soda purchased one place would be subject to the tax, but the same sandwich and soda purchased at another location would not be subject to the tax.

Nevertheless, Judge Kennedy’s decision went against the Taxpayers Association. In evaluating our case, he relied on what lawyers call the “rational basis test.” Under the rational basis test, if the judge can identify a set of circumstances that

the Legislature might have used to justify the tax, and those circumstances make the law constitutional, the judge is obligated to uphold the law.

Judge Kennedy ruled that while restaurants and retail establishments do sell some similar products, they “maintain separate characteristics” which “might well warrant treating restaurants differently from other retail establishments.” Judge Kennedy further ruled that “the Legislature may also have reasonably concluded that any potential detriment to restaurants caused by the tax would be offset by the benefits restaurants receive from tourism,” and thus upheld the tax’s constitutionality.

We are disappointed in this decision, and still feel the Restaurant Tax inappropriately discriminates. In effect, it is yet another example of the government choosing winners and losers in the marketplace. However, having reviewed Judge Kennedy’s decision and the likelihood of prevailing in an appeal, we have declined to pursue this case any further.

Profiling Legislative Chairs: Senators Reid and Henderson

The Taxpayers Association’s staff get to know members of the Legislature quite well, but our members aren’t that lucky. To that end, this month we are providing profiles of two key legislators, Senator Deidre Henderson, chair of the Senate Revenue and Taxation Committee, and Senator Stuart Reid, chair of the Senate Education Committee.

We asked each of them to answer four questions about themselves and their priorities in the 2013 session.

1. What do you see as the most important priorities for your committee in the upcoming legislative session?
2. What are the “big” issues the Legislature has to confront in the 2013 session?
3. What do you do in your day job?
4. Why did you want to serve in the Legislature?

Below are the responses each of them gave.



Senator Deidre Henderson (R-Spanish Fork)

Senator Deidre Henderson: My focus as chair of the Senate Revenue and Taxation committee is to promote solutions that maintain Utah’s solvency, mitigate the difficulties imposed by the federal government, and ensure fiscal sustainability through broad-based, low-rate tax policies. There are several legislative proposals that I expect will attract attention.

Gas Tax. I’m running a resolution requesting Congress pass a law allowing states to lower the federal gas tax in exchange for Utah raising the state gas tax by the same amount. A bill

to make that change was introduced but not passed in the 112th Congress. Keeping our gas tax dollars here at home means more money for roads because those dollars won’t have federal strings

attached.

Streamlined Sales Tax. Sen. Wayne Harper is positioned to deal with streamlined sales tax should Congress pass the Main Street Fairness Act. We expect to see \$120 million in new revenue as a result, which would be offset by tax cuts elsewhere.

The biggest issue our legislature will deal with this year is the complicated, expensive Affordable Care Act.

The biggest issue our legislature will deal with this year is the complicated, expensive Affordable Care Act. Do we expand Medicaid? Do we revamp our state health care exchange? How will the costs associated with implementation affect our budget, and what will we need to cut elsewhere to pay for Obamacare?

Another big issue is the growing concern over the level of federal funds spent here in Utah, and what we do if those funds dwindle or disappear altogether. When more than 40 percent of the spending in Utah is federal money – and the federal government borrows 46 cents of every dollar – we face an unsustainable reality. Expect to see efforts to address this problem before it becomes a crisis.

During the day (and at night), I’m mother to five talented, strong-willed, smart and funny children. My husband Gabe and I are small business owners in the health care industry. I helped manage the original Congressional campaign of Rep. Jason Chaffetz in 2008. Upon his election, I ran his political operation, mostly from my laundry room, for several years before running myself for the state senate.



Senator Stuart Reid (R-Ogden)

I’m passionate about good government at every level. Good government is small and

Constitutionally limited. It protects individual freedoms, avoids wasting hard-earned tax dollars and is accountable to the people. I'm dedicated to fighting for better government where we need it and preserving good government where we have it.

Senator Stuart Reid: As the chair of the Senate Education Committee my first priority is to make sure that each bill presented before the committee will receive a fair and full hearing. That acknowledged, it is my hope to manage the committee in a way that honors the goals, objectives and priorities established by Senate leadership and the consensus of the Senate prior to the start of the General Session. I anticipate my priorities will reflect that consensus, accounting for aligning each individual education silo within its own silo and then aligning the silos together, creating a

seamless education system among Public Education, UCAT and Higher Education.

The big issues remain the same year in and year out: balancing the budget while adequately funding education.

In my day job I am an economic development consultant for governments and developers.

I wanted to serve in the legislature to advance effective economic development outcomes, aligning education in support of those outcomes, to ultimately increase prosperity for the people of Utah.

The big issues remain the same year in and year out: balancing the budget while adequately funding education.

Guest Commentary by Paul Avelar

In Choosing Your Occupation, Let Freedom Ring

The right to earn an honest living—to work in a common occupation, to receive compensation for work, and to enjoy the benefits resulting from work—touches us every day. This right is often violated by government regulators and ignored by judges. But during its upcoming session, the Utah Legislature has the opportunity to meaningfully protect this right.

The right to earn an honest living is most frequently threatened today by occupational licensing. An “occupational license” is government permission to work in a particular field. To get the license, an aspiring worker must clear various hurdles, such as having a certain amount of education or training or passing an exam. Occupational licenses don't just affect doctors or lawyers. In the 1950s, only one in 20 U.S. workers needed the government's permission to pursue their chosen occupation. Today, that figure stands at almost one in three.



Paul Avelar
Institute for Justice

Why the explosion in licensing? Because regulated professions themselves push for it. Licensing

makes it harder for new workers to enter a field, which limits competition with those already in the profession. Over the years, more and more professions lobby for licensing rules, grandfathering in existing professionals while putting up high barriers to new competitors. This is so common that economists have a special name for it: Regulatory capture.

The Institute for Justice (IJ) recently published *Licensed to Work*, which studied occupational licensing laws for 102 low- and moderate-income professions nation-wide. The report found that barriers imposed by licensing schemes are not only widespread, but often severe, arbitrary, and irrational. Utah did not do well in this study; it is the 12th most broadly and onerously licensed state in the nation. The average barriers for the 46 of 102 occupations Utah licenses are \$269 in fees, 417 days lost to education and experience requirements, and two exams.

For example, Utah requires cosmetologists to take at least 2000 hours of schooling—40 hours a week for 50 weeks at a cosmetology school—among the very most in the entire

country—indeed twice what New York requires and 400 more hours than California. Moreover, the costs of that schooling—which were not included in the study—can be as much as \$18,000. Worse still, this license applies to a host of harmless acts. A person who just braided hair—who did not cut or color hair or use any chemicals—must get the same license.

Last year, IJ challenged Utah's regulation of hairbraiding on behalf of Jestina Clayton. After a year-and-a-half of litigation, the court found Utah's license requirement “so disconnected from the practice of African hairbraiding, much less from whatever minimal threats to public health and safety are connected to braiding, that to premise Jestina's right to earn a living by braiding hair on that scheme is wholly irrational and a violation of her constitutionally protected rights.” Today Utah braiders are again able to braid without the need of a license.

But Utah cosmetologists and cosmetology schools are pushing to re-license braiding. A forthcoming bill would require 300 hours of schooling for the common practice of braiding hair extensions—which can be bought “over-the-counter,” and used by anyone for free. The new license would again establish a cosmetologist monopoly over paid-for braid-in extensions and would again require braiders to spend thousands of dollars at cosmetology schools before they could earn a living.

During the one-and-a-half years of Jestina's court case, no one produced a single piece of evidence showing that hair braiding was a threat to the public. Several states, including Arizona, California, Georgia, Maryland, Michigan, and Washington, completely exempt hair braiders from licensure, without ill-effects. Even Washington, D.C., which passed a law 20 years ago for a “specialty license” requiring 100 hours of training (in response to another IJ lawsuit), has never bothered to actually implement that license. In each of these places, braiders create jobs for themselves and others by providing sought-after services for consumers.

Apologists for occupational licensing claim it protects consumers. There is, however, little evidence that licensing increases consumer protection above competitive markets.

The average barriers for the 46 of 102 occupations Utah licenses are \$269 in fees, 417 days lost to education and experience requirements, and two exams.

With help from websites like Yelp or Angie's List, or by word-of-mouth recommendations from family, friends, and neighbors, consumers already judge which providers offer quality services and more effectively weed out incompetents than licensing boards, which are often captured by the very professions they regulate.

Rather than pick on braiders, the Legislature should turn their attention to an issue that actually matters: Tackling the larger problem of occupational licensing. IJ has developed a model bill – the Occupational Licensing Relief and Job Creation Act – that recognizes and ensures the right of every individual to earn an honest living free from occupational regulations that are more restrictive than necessary to protect public health and safety. The Act allows legislators to choose from a menu of regulatory options that are less onerous than licensing – including

During the one-and-a-half years of Jestina's court case, no one produced a single piece of evidence showing that hair braiding was a threat to the public

voluntary certification, voluntary registration, bonding or insurance requirements, government inspections, and private causes of action to remedy consumer harms. The Act also creates a right of action to allow people to challenge unnecessarily restrictive occupational regulations. This will allow more people to protect their own right to earn a living in court – as Jestina did – but to do so more quickly and less expensively.

Restrictive occupational licensing schemes harm entrepreneurs, increase unemployment, reduce consumer choice, and raise consumer prices. These consequences are often intended by industry insiders, who push for such laws to prevent competition and protect their own profits. Utah legislators have at least two opportunities this term to push back against these industry insiders while also protecting the right to earn an honest living. They should vote down the re-regulation of hair braiding and they should vote for the Occupational Licensing Relief and Job Creation Act.

Utah Taxpayers Association Pre-legislative Conference

Thursday, January 24, 2013 7:00am – 9:00am
Utah State Office Building – Room 1112 (Just north of Capitol)

Come listen as Legislators and opinion leaders, including Senate President Wayne Niederhauser and House Speaker Rebecca Lockhart, discuss the issues that will be facing the state during the 2013 session of the Utah Legislature. There is no fee to attend, so please reserve your spot by calling (801) 972-8814 or by emailing sophie@utahtaxpayers.org.

-You're Invited-

Legislative Committee Meetings for the 2013 General Session

The Utah Taxpayers Association will hold Legislative Committee meetings during the Legislative Session every Thursday at 7:00 am, in the Seagull Room in the East Annex building (Senate building) near the Capitol cafeteria. These meetings are open to all members of the Association and will begin on January 31st and will continue through March 7th. We will discuss the progress of bills of interest, provide updated legislative watchlists and answer questions about the legislative session. Please join us on Thursdays at 7:00am.