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Utah State Senate
Utah State Capitol, Suite 320
Salt Lake City, UT 84114-5115

Dear Senators,

As you meet this evening to discuss HB 328, I want to share two thoughts with you. First and foremost, let me reaffirm my support for providing enhanced services to the public. Providing the best for the citizens of Utah is a goal we all share and I agree that making critical, public-facing services available on Friday is part of that goal. My veto of HB 328 is based on the simple fact that opening state office buildings an additional day per week has real costs, such as electricity and maintenance. Although a fiscal note of approximately $820,000 annually was submitted to HB 328, this fiscal note was not included with the bill as it passed through the legislative process. Since no funding was appropriated when the bill was passed, I did not feel I could sign a bill putting an unfunded mandate on the state (which we all certainly do NOT like to receive from the federal government). Because I agree with the concept of enhanced service, I worked with the bill sponsor to create an Executive Order directing critical, public-facing services to be available on Fridays by person, online, or by phone. The purpose of the Executive Order is to continue to provide excellent customer service within budgetary constraints.

Since yesterday morning when the potential for a veto override of HB 328 was unexpectedly raised, I asked the analysts in GOPB to begin working with analysts in LFA to identify their collective best estimate of the associated cost of HB 328. After working yesterday and today, I understand the identified fiscal impact is approximately $790,000. I have also been informed that because funding for these particular costs come from the Internal Service Fund, that the funding would not necessarily be appropriated with passage of the bill (or in this case a veto override). Rather, the money will be appropriated to the Fund as needed, as the actual costs are realized. As long as the Legislature recognizes there is a cost associated with opening buildings an additional day, and that cost will be funded one way or another, then the Executive Branch will continue to provide the best service we can for the funding we receive.

Second, let me address some constitutional comments raised during the House debate on HB 328. Before I do so, however, please know that I do not believe that the

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discussion around HB 328 should be about the constitutionality about the original "Working 4 Utah" Executive Order. As I stated above the discussion and the reason for my veto is and should be about funding. Nevertheless, since the question of constitutionality was raised (specifically that the Order violates Article XVI, Section 6 of the Utah Constitution) let me share with you that my General Counsel has informed me that the courts have not interpreted this provision outside of the context of factories, smelters and mines. Common understanding of this provision is that it does not forbid the state from establishing flexible work schedules or from asking employees to work more than eight hour days. It is difficult to believe that a court would construe this language to mean that the state and its subdivisions are constitutionally forbidden from asking employees, be they a public safety officer, a firefighter, a doctor at the University Hospital or an agency head, to work more than eight hours in any given day.

This interpretation comports with the apparent Legislative understanding of this provision. Until 1969, Utah Code Sections 34-3-1 and 34-3-2 provided for an eight hour work day. In that year, the Legislature repealed that section and added Utah Code Section 34-30-8 which provides "forty hours shall constitute a working week on all works and undertakings carried on by the state, county, or municipal governments, or by any officer of the state or of any county or municipal government." In light of this history, there is no reason to conclude that a court would find the four day, ten hour schedule to be constitutionally infirm.

Some comments suggested that the Governor lacked the authority to implement a four day work week. Article VII, Section 5 of the Utah Constitution invests the Governor with the power to "see that the laws are faithfully executed." Utah Code recognizes that authority and echoes that the Governor "shall supervise the official conduct of all executive and ministerial offices." *See* Utah Code Section 67-1-1(1). In light of the Constitutional power to execute the laws, and statutory authority to supervise all executive offices, there can be no doubt that the Governor possesses the authority to issue an Executive Order regarding the hours of operation for state offices.[1]

Thank you again for your consideration as you deliberate on this important matter. I look forward to working with you to keep Utah the "Best Managed State".

Very Truly Yours,
Gary R. Herbert
Governor, State of Utah

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[1] Article XVI, Sections 6 and 7 do not dictate a contrary conclusion. Some have argued that these provisions give the Legislature the Constitutional authority to mandate that state offices remain open on Fridays. Those sections do not, however, speak to that question. Section 6 discusses the 8 hour work day and Section 7 gives the Legislature the authority to enforce that work day.