

GREATER SALT LAKE MUNICIPAL SERVICES DISTRICT

2021 LEGISLATIVE BILL REVIEW

By Mark H. Anderson

H.B. 82 Single Family Housing Modifications:

HB 82 went through a number of drafts prior to being signed into law. The Utah Association of Special Districts (the “Association”) worked extensively with the sponsor and other municipal stakeholders, including the MSD, to get much needed amendments for local districts, special service districts, municipalities and other service providers. With a number of exceptions, the Bill requires land use authorities to allow accessory dwelling units (“ADUs”) in most areas that are zoned for residential use. An ADU must be created within the existing footprint of the home. This requirement was amended into the Bill at the request of the Association and the MSD to provide protections for culinary and wastewater sewer providers. The home must be the primary residence of the property owner. The ADU must be rented for a minimum of 30 days (no short-term rentals are allowed). The ADU must be constructed/created in adherence to all current building, fire and health codes. The Bill gives the land use authority the ability to place a lien on a home, after following the required due diligence process, if an owner advertises or uses the ADU as a short-term rental or if the ADU does not comply with all building, health and fire codes. A municipality or county may prohibit the installation of a separate utility meter for an ADU; require that an ADU be designed in a manner that does not change the appearance of the structure as a single-family home; require an additional on-site parking space for an ADU regardless of whether the primary home is new construction or an existing house; and require the replacement of any parking spaces that were utilized if the ADU is created within a garage or a carport. An ADU may not be created within a mobile home. A municipality or county may prohibit the creation of an ADU if the lot is 6,000 square feet or less; may require the homeowner to obtain a permit or license before renting an ADU; and may prohibit ADUs within a zoning district that covers an area equivalent to 25% or less of the municipality’s or county’s residential use zone. Utah Code Ann. § 10-9a-530.

H.B. 96 Emergency Management Amendments:

This Bill requires counties, cities, towns and metro townships, but not local districts or special service districts, to designate an emergency manager and requires the emergency manager to create an emergency operations plan “to coordinate emergency preparedness, response, mitigation, coordination, and other recovery activities; and ... coordinate with other emergency managers and officials to ensure efficient, appropriate, and coordinated emergency preparedness response, mitigation and recovery.” Each impacted political subdivision is required to provide for emergency interim succession of the emergency manager as provided in the Emergency Interim Succession Act found in Title 53, Chapter 2a, Part 8 of the Utah Code. Each county is required to create and maintain an emergency operations plan but a municipality, such as a metro township or a town, may either create and maintain its own emergency operations plan or adopt the emergency operations plan created by the county. Utah Code Ann. §§ 53-2a-1402 and 53-2a-1403.

H.B. 98 Local Government Building Regulation Amendments:

H.B. 98 was a developer driven Bill designed to allow a building permit applicant to engage an independent third-party building inspector to conduct an inspection, and would allow applicants to opt out of a governmental plan review process and engage a licensed building inspector to review and approve the building plans and issue a certificate of occupancy if the county or municipality fails to meet statutory deadlines. It would also exempt a construction project involving repairs to residential structures damaged by a natural disaster from specified state construction code and building permit requirements, eliminating any governmental inspection until after repair work has been completed. For example, the Bill would allow a builder/ developer to hire a third-party building inspector for any single or two family home or townhouse if the structure is not inspected by the land use authority's building inspector within three business days after receiving the request for an inspection. The deadline, but not the penalty, is a current statutory requirement. Under H.B. 98, a third-party building inspector hired and paid for by the builder could also issue a certificate of occupancy. The Bill would prevent a municipality or a county (for unincorporated areas) from requiring the resubmittal of plans with errors or deficiencies, with the exception of geotechnical or geological deficiencies, and a municipality or county would only be allowed to require one resubmittal of plans to address deficiencies found in a geotechnical or geological report.

H.B. 98 was vetoed by Governor Cox due to concerns over Utah communities losing flood insurance coverage provided through FEMA's National Flood Insurance Program. The Bill would have taken away virtually all of a land use authority's ability to require builders to follow zoning, design element and architectural design requirements, require that the red lines of design plans be fixed, or require that houses that sustain damage due to a natural disaster be repaired to meet current fire and building code requirements. Similar legislation, but with changes to avoid the FEMA issue, should be anticipated for the 2022 Legislative Session, if not sooner.

H.B. 128 Local Accumulated Fund Balance Amendments:

This Bill increases the maximum accumulated fund balance allowed in a municipality's general fund. For example, the Town of Brighton may accumulate a fund balance of up to 100% of the total revenue of the Town's general fund for the current fiscal period. The prior limit was 75%. Utah Code Ann. §§ 10-5-113(2) and 10-6-116(2). The Bill does not specifically call out metro townships.

H.B.244 First Class County Highway Road Funds Amendments:

This Bill includes "local option highway construction and transportation corridor preservation fee" funding for the Kearns Metro Township and the Magna Metro Township over a 15-year period. Other designated municipalities in Salt Lake County will receive a share of the County of the First-Class Highway Projects Fund. A primary concern with the source of funding for Kearns and Magna is the possibility that the funds may be limited to "corridor preservation" activities, which is not the case with money from the County of the First-Class Highway Projects Fund. "Beginning in a fiscal year beginning on or after July 1, 2023, and for 15 years thereafter," Salt Lake County is directed to transfer to Kearns and Magna a portion (\$300,000 and \$225,000,

respectively) of the local option highway construction and transportation corridor preservation fee imposed on each motor vehicle registration within Salt Lake County. Utah Code Ann. § 41-1a-1222(4). In an earlier draft of the Bill, Kearns and Magna were to receive money from the same source as other Salt Lake County municipalities. The disparate treatment of Kearns and Magna creates a statutory provision that may appear to make metro townships subservient to Salt Lake County. This Bill is different from past highway funding Bills in that it gives money directly to municipalities, rather than listing specific projects that are to be funded.

H.B. 256 County Land Use and Development Amendments

This Bill may be a reaction to the Olympia Hills development in unincorporated Salt Lake County. In its final form, the Bill declares that a provision in a county development agreement entered into on or after May 5, 2021 “is unenforceable if the provision requires an individual or an entity, as a condition for issuing building permits or otherwise regulating development activities within an unincorporated area of the county, to initiate a process for a municipality to annex the unincorporated area”, but that restriction “does not affect or impair the enforceability of any other provision in the development agreement.” Utah Code Ann. § 17-27a-102(4).

H.B. 293 Open Meeting Minutes Amendments:

This Bill requires a local district, such as the MSD, or a special service district to post to the Utah Public Notice Website a copy of the approved minutes and any public materials that were distributed at the meeting. That requirement may be satisfied by posting “to the state website a link to a website on which the approved minutes and any public materials distributed at the meeting are posted”. Utah Code Ann. § 52-4-203(4)(g)(ii). The quoted language was added to the Bill at the request of the Association.

H.B. 308 COVID-19 Vaccine Amendments:

With very limited exceptions, this Bill prohibits a governmental entity from requiring, “directly or indirectly, that an individual receive an emergency COVID-19 vaccine.” Utah Code Ann. § 26-68-102(2) and (3).

S.B. 58 Metro Township Amendments:

This Bill authorizes a Metro Township to impose a municipal energy sales and use tax or a municipal telecommunications license tax after holding a public hearing. Notice of the public hearing must be provided at least fourteen days in advance of the hearing by mailing the notice to each mailing address in the Metro Township, posting the notice on the Utah Public Notice Website and posting the notice to the Metro Township’s website (if there is one). The Bill also requires the State Tax Commission to provide the collection data necessary to verify that revenues collected by the Commission are properly distributed to the Metro Township. Utah Code Ann. § 10-3c-204(2) and (3).

S.B. 72 Open and Public Meetings Amendments

This Bill adds a provision to the Open and Public Meetings Act that prohibits a public body from taking a vote in a closed meeting “except for a vote on a motion to end the closed portion of the meeting and return to an open meeting.” Utah Code Ann. § 52-4-204(3)(b).

S.B. 125 Open and Public Meetings Act Amendments:

With limited exceptions, this Bill requires a public body that convenes and conducts an electronic meeting to provide space and facilities at an anchor location for members of the public to attend open portions of the meeting; and authorizes the public body to provide electronic means for members of the public who are not physically present at the anchor location to attend the meeting remotely. However, the requirement to provide an opportunity for members of the public to physically be present at the anchor location does not apply to an electronic meeting if the chair determines that conducting the meeting with members of the public physically present “presents a substantial risk to the health and safety of those present or who would otherwise be present at the anchor location; or ... the location where the public body would normally meet has been ordered closed to the public for health or safety reasons; and (ii) the public notice for the meeting includes: (A) a statement describing the chair’s determination...: (B) a summary of the facts upon which the chair’s determination is based; and (C) information on how a member of the public may attend the meeting remotely by electronic means”. The Bill also authorizes the individual chairing an electronic meeting to determine that continuing the meeting with members of the public physically present “presents a substantial risk to the health or safety of those present at the anchor location; and ... announces during the electronic meeting the chair’s determination”, including a summary of the facts upon which the determination is based; provided that “in convening the electronic meeting the public body has provided means by which members of the public who are not physically present at the anchor location may attend the electronic meeting remotely by electronic means.” Utah Code Ann. § 52-4-207(4) and (5). Effective May 5, provisions in S.B.125 will replace the law under which the MSD’s electronic meetings have been conducted during the COVID-19 pandemic.

S.B. 151 Governmental Immunity Act Notice of Claim Amendments:

This Bill requires governmental entities, including MSD, the Metro Townships, the Town of Brighton, and Salt Lake County, to file with the Division of Corporations and Commercial Code (the “Division”) a statement that includes both the physical address to which notices of claim may be delivered by hand or transmitted by mail and “the e-mail address to which a notice of claim is to be sent, for a notice of claim that a claimant chooses to send by e-mail, and the e-mail address of the ... attorney... who represents the governmental entity.” Henceforth, a notice of claim is required to be delivered by hand or transmitted by mail to the physical address provided to the Division or be sent by electronic mail to the e-mail address provided by the governmental entity, provided that a claimant who uses electronic mail to deliver a notice of claim “shall contemporaneously send a copy of the notice of claim by electronic mail to the ... attorney ... who represents the governmental entity.” Utah Code Ann. § 63G-7-401(3)(c) and (d) and (5)(a)(iii).

S.B. 188 Procurement Code Revisions:

This year's legislative contribution to the Utah Procurement Code is very modest. It provides that, in evaluating bids, a procurement unit is to seek "to achieve the greatest long-term value to the state and the procurement unit." The Bill also provides that "[a] contractor under a multiple award contract resulting from a bidding process may not lower the contract price unless the contractor's solicitation response that led to the contract award was the lowest price solicitation response." Utah Code Ann. §§ 63G-6a-606(1)(b) and 63G-6a-1206.5(3).

S.B. 201 Public Notice Amendments:

In a 227-page Bill, Senator Karen Mayne universally eliminated statutory requirements that public notices be published in a newspaper, while leaving all other statutory notice requirements intact.

S.B. 240 County Recreational Area Amendments:

This Bill will enable the Town of Brighton take over land use authority within its jurisdiction. It also changes requirements for and, possibly, the makeup of the Mountainous Planning Commission. The Bill also repeals the sunset dates for statutory provisions related to mountainous planning districts and specified provisions relating to a county's funding of municipal services in a designated recreational area, which will allow Salt Lake County to continue to fund Unified Fire and Unified Police activities in the Canyons.