

UMAA Legislative Update



2024
Spring Training

End of Session Checkpoint

ULCT Tracked
26.3%
of all bills

940 bill files opened

ULCT tracked 247 bills | 591 bills passed

Thanks for the Friday calls, LPC, & your input!



HB 396: Workplace Discrimination Amendment

Rep. Brady Brammer and Sen. Michael Kennedy

- **Application:** Applies to all employers (not just government employers)
- **Limits Conduct:** Prohibits compelling an employee to engage in “religiously objectionable expression” that **the employee** reasonably believes would burden or offend the **employee’s sincerely held religious beliefs**.

Dress and Grooming

Prayer

Speech

Abstention

Scheduling***

**Abstention relating to
healthcare**

HB 396: Workplace Discrimination Amendment

Rep. Brady Brammer and Sen. Michael Kennedy

- **Exception to Requirement:**
 - **Undue burden:** “**Substantially** interfering” with an employer’s:
 - a) **Core** mission
 - b) Ability to conduct business in an **effective** or **financially reasonable manner**
 - c) Ability to provide training and safety instruction for the job
- **Process to Obtain Accommodation:**
 - Request that employer comply with this law and
 - Give employer reasonable opportunity to accommodate
- Modifies part of the Utah Anti-Discrimination Act
- **Effective May 1, 2024**

SB 150: Exercise of Religion Amendments

Sen. Todd Weiler and Rep. Jordan Teuscher

- **History:**
 - **First Amendment:** “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.”
 - **Smith case (1990):** “Generally applicable religious-neutral criminal laws” do not violate the free exercise of religion rights of individuals – Removing the strict scrutiny
 - **Religious Freedom Restoration Act (1993):** Congress “restored” the religious freedom laws (and strict scrutiny)
 - **Boerne case (1997):** RFRA does not apply to states.
 - **Response to Boerne:** Many states pass laws similar to RFRA to give same protections as RFRA

SB 150: Exercise of Religion Amendments

Sen. Todd Weiler and Rep. Jordan Teuscher

- **Intended Purpose:** Now **27 years later**, Legislature wants to pass their own “Mini-RFRA”. This bill “complements, rather than disrupts, the balance between religious rights and other important civil rights.”
- **Prohibited Activity: Governmental entities** restricting the “free exercise of religion”
- **Free Exercise of Religion:** “The right to act or refuse to act in a manner **substantially motivated** by a **sincerely held religious belief**, regardless of whether the exercise is **compulsory** or **central to a larger system of religious belief**”
 - **Compulsory:** Prayer (5x during day);
 - **Central:** Refusing to represent city in pride parade

SB 150: Exercise of Religion Amendments

Sen. Todd Weiler and Rep. Jordan Teuscher

- **Governmental Entity:** (short list)
 1. A city or town
 2. Any person, when acting under color of state law
 3. An employee or agent of an entity who is acting in the capacity of an employee or agent of the entity.
- **Exception to Requirement: Strict Scrutiny**
 - Essential to a compelling governmental interest **AND**
 - Least restrictive means in furthering that interest

SB 150: Exercise of Religion Amendments

Sen. Todd Weiler and Rep. Jordan Teuscher

- **Notice Provisions by Employee:**
 - **Timing of Notice:** 60-day advance written notice
 - **Service:** City or town clerk by hand, mail, or email
 - **Contents of Notice:**
 - States that they **intend** to bring the action based on this section of code
 - Describes **what** the government action is that has or will burden the person’s free exercise of religion
 - Describes **how** the government action has or will burden the person’s free exercise of religion.
- **Exceptions to Notice Provisions:**
 - If government action is **ongoing and** notice requirements would place an “**undue hardship**” on person or **increase the harm** suffered by the person OR
 - Is **likely to occur or reoccur** before end of the 60 days
- **Penalties:** If employee prevails in court, then court must award reasonable attorneys fees and costs
- **Effective May 1, 2024**

HB 460: Gov't Employee Conscience Protection

Rep. Michael Peterson and Sen. Todd Weiler

- **Prohibited Activity:**

1. Denying an employee's "**reasonable**" request to be relieved from performing a certain **job, duty, or function** if:

- Performing the task would conflict with the employee's **sincerely held religious beliefs or conscience**;

- Met all other requirements and timelines for the request

2. Taking **retaliatory action** for submitting a meritorious request.

HB 460: Gov't Employee Conscience Protection

Rep. Michael Peterson and Sen. Todd Weiler

- Exceptions:
 - **Does not impose an undue hardship on the governmental entity**
 - “Substantial burden, privation, or adversity” on governmental entity that would result from granting an employee’s request to be relieved from performing a certain task when considering all relevant factors***
 - If task is part of **training or safety instructions** directly related to the employee’s employment
 - Granting the request would create a conflict with **an existing legal obligation** and the governmental entity cannot avoid the conflict
 - The employee is a **first responder** and the request by the employee involves a task **that involves protecting the safety of the public**
 - Employee’s asserted religious beliefs or conscience described is being asserted for an **improper purpose**

HB 460: Gov't Employee Conscience Protection

Rep. Michael Peterson and Sen. Todd Weiler

- **Process to Make Request:**

- Employee:

- Employee must make **request** for accommodation **within two days** of the assignment
 - If assignment to be performed is less than two days, then employee must make request in oral or written format **as soon as possible**.
 - Give the employer reasonable opportunity to grant the request

- Employer:

- **Respond** as soon as practicable but **no less than five days** before the assignment is to be performed
 - If denial:
 - Explanation of decision
 - Cite a reason why it would be an undue burden on city or town based on circumstances
 - Appeal rights

HB 460: Gov't Employee Conscience Protection

Rep. Michael Peterson and Sen. Todd Weiler

- **Private right of action**
 - A number of exceptions
 - Must file 180 calendar days after the day on which the employee received the governmental entity's response
- **Classification of Records:** Records that include information related to the request or government's response are considered "protected" under GRAMA and subject to disclosure and penalty provisions.
- **Recommendations:** Adopt a policy detailing the process of request, response, grievance process, and appeal rights! Must be specific to this protection/process.
 - Give notice of changes to policy
- **Effective May 1, 2024**

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	SB 396 Workplace Discrimination	SB 150 Exercise of Religion	HB 460 Gov't Employee Conscience Protection
Applies to Who?	-All employers (gov. and non-gov.) -Exception: Employers with less than 15 employees are not required to respond to scheduling requests	-Governmental entities -Any person, when acting under color of state law -Any employee or agent of gov. entity if acting on their behalf	-Governmental entities -Exception: First responders when performing a task that involves protecting the safety of the public
Prohibited Activity	-Compelling an employee to engage in some sort of act or refrain from an act that the employee reasonably believes would burden or offend the employee's sincerely held religious beliefs	Substantially burdening a person's free exercise of religion, regardless of whether the burden results from a rule of general applicability.	Require task conflicting with sincerely held religious belief or conscience or retaliation for making a request
Exceptions to Prohibited Activity	-Cause an undue burden by substantially interfering with the employer's core mission, the ability to conduct business in an effective or financially reasonable manner or provide training and safety instruction	-Demonstrates that burdening the person's free exercise is: 1) Essential to furthering a compelling government interest and 2) The least restrictive means	Undue hardship – a substantial burden, privation, or adversity that would result by accommodating the employee's request. Includes laundry list of "relevant factors" to consider.
Process for Request or Action	-Oral or written request by employee -Provide employer with a reasonable opportunity to accommodate employee	None specifically stated, but as a response to an assignment: -60 day notice before court action is filed unless ongoing or will be harmed before 60 days	Task date is < 2 days: ASAP Task date is > 2 days: = or > 2 days Gov. response: As soon as practicable, but no more than 5 days after request
Remedies	None stated, but likely would default to Utah Anti-Discrimination Act Penalties because that is where the code is housed	Shall award reasonable attorneys fees and costs	Backpay, rehire/reinstate, injunction, may be awarded reasonable attorneys fees and costs; GRAMA penalties apply if disclosure of request or reply

Federal and State Law

34A-5-109. Application to employee dress and grooming standards.

This chapter may not be interpreted to prohibit an employer from adopting reasonable dress and grooming standards not prohibited by other provisions of federal or state law, provided that the employer's dress and grooming standards afford reasonable accommodations based on gender identity to all employees.

34A-5-111. Application to the freedom of expressive association and the free exercise of religion.

This chapter may not be interpreted to infringe upon the freedom of expressive association or the free exercise of religion protected by the [First Amendment of the United States Constitution](#) and [Article I, Sections 1, 4, and 15 of the Utah Constitution](#).

Section 1. [Inherent and inalienable rights.]

All persons have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

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(15) The procedures contained in this section are the exclusive remedy under state law for employment discrimination based upon:

(a) race;

(b) color;

(c) sex;

(d) retaliation;

(e) pregnancy, childbirth, or pregnancy-related conditions;

(f) age;

(g) religion;

(h) national origin;

(i) disability;

(j) sexual orientation; or

(k) gender identity.

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HB 257: Sex-based Designations for Privacy, Anti-bullying and Women's Opportunities

Rep. Kera Birkeland and Sen. Dan McCay

Ban of transgender people from Utah's public bathrooms passes Senate

The legislation would also ban transgender students from using school bathrooms that match their gender identity and strengthen Title IX protections in athletics.



HB 257: Sex-based Designations for Privacy, Anti-bullying and Women's Opportunities

Rep. Kera Birkeland and Sen. Dan McCay

- In public schools (K-12), bathrooms are impacted. In city owned or controlled facilities, general bathrooms are not impacted.
- **The restriction for cities:** Individuals are prohibited from entering "sex-designated" "changing rooms" that are "open to the general public" unless:
 1. The individual's sex at birth corresponds with the sex designation of the changing room; or
 2. The individual has legally amended their birth certificate to correspond with the sex designation of the changing room **and** had a "primary sex characteristic" surgery.

HB 257: Sex-based Designations for Privacy, Anti-bullying and Women's Opportunities

Rep. Kera Birkeland and Sen. Dan McCay

- **Sex-designated:** means a facility that is "designated specifically for males or females and not the opposite sex."
- **Restroom:** a "space with a toilet."
 - Gives several specific examples of a "restroom." "Changing room" is not listed.
- **Changing room:** means a dressing room, fitting room, locker room, or shower room that is meant for multiple people to use at the same time.
 - "Changing room" also includes a restrooms (i.e. a "space with a toilet") when it is contained in or attached to a "changing room."
- **Open to the general public:** means a changing room that is freely accessible to the general public or to those who have purchased a ticket or paid a fee to access the facility with the changing room.
 - Does not include employee only changing rooms.

HB 257: Sex-based Designations for Privacy, Anti-bullying and Women's Opportunities

Rep. Kera Birkeland and Sen. Dan McCay

- **Exceptions :**

- Minor children in a changing room that corresponds with a parent, guardian, or relative's sex if the child need assistance from a parent, guardian, or relative to use the changing room.
- Disabled minors and vulnerable adults (as defined in state code) that require the assistance of their caretaker.
- Public safety personnel acting in their public safety capacity (police, fire, ems).
- Employees of a healthcare facility when providing health care services.
- Individuals whose employment duties include maintenance or cleaning of the changing room

HB 257: Sex-based Designations for Privacy, Anti-bullying and Women's Opportunities

Rep. Kera Birkeland and Sen. Dan McCay

- **Compliance:**

- Must **call law enforcement** if a complaint or allegation of unlawful activity is received (lewdness, lewdness involving child, voyeurism, loitering in a restroom or changing room, criminal trespass in a changing room).
- **New Construction** must include at least one single occupant facility.
- **Existing bathrooms or changing rooms** must "consider" the feasibility of retrofitting or remodeling to include:
 - Floor to ceiling walls or doors or similar privacy protections
 - Curtains; or
 - Other methods of improving privacy.
- **Adopt a privacy compliance plan** to addresses compliance with government's obligations under the law.

HB 257: Sex-based Designations for Privacy, Anti-bullying and Women's Opportunities

Rep. Kera Birkeland and Sen. Dan McCay

- **Penalty for individuals:** Criminal trespass if an individual "*knowingly*" enters a changing room in violation of the prohibitions in HB257 "*under circumstances which a reasonable person would expect to likely cause an affront or alarm to, on, or in the presence of another individual.*"
 - Police and prosecutors need to know the standard.
- **Enforcement against City:**
 - State Auditor investigates alleged violations, and if it determines a violation has occurred, it will provide 30 days to cure.
 - If violation is not cured, the matter is referred to the Attorney General who "shall" impose a fine of up to \$10,000 per/day, per/violation.
 - Can seek judicial review of fine under a "clearly erroneous" standard.

HB 257: Sex-based Designations for Privacy, Anti-bullying and Women's Opportunities

Rep. Kera Birkeland and Sen. Dan McCay

- **Indemnification.** State will "defend, indemnify, and hold harmless" any government entity that enforces HB257 from any "claims or damages, including court costs and attorneys fees" **IF**:
 - They arise because of the law; and
 - The claims, damages, etc. are not covered by insurance.
- **Effective Date:**
 - Effective mid-session – January 30, 2024.
 - Enforcement delayed until May 1, 2024.

SB 233 Medical Cannabis Amendments

Sen. Luz Escamilla and Rep. Ray Ward

- **Overriding Purpose:** Treat all **medical cannabis** users and cardholders the same as legal user and prescription holder of **controlled substance**.
- **Adverse Action Because of Drug Use:**
 - Must have a **drug policy*** in place before taking any adverse action against an employee that **tests positive** for cannabis or controlled substance. (Exceptions)
 - Policy must give **comprehensive details** when an employee would be disciplined
 - Policy must not treat medical cannabis **any different** than another controlled substance
- **Adverse Action Because of Cardholder/Prescription Holder:**
 - Must first consult with City Attorney
 - Obtain approval from the Mayor

HB 55: Employment Confidentiality Amendments

Rep. Kera Birkeland and Sen. Todd Weiler

- **Application:** Applies to all employment confidentiality clauses (government and nongovernment)
- **Prohibits confidentiality clauses in 1) Condition for Employment and 2) Retaliation:**
 - 1) Nondisclosure Clause: Provision that prevents or prohibits (or has that effect) an employee from “**disclosing or discussing**”:
 - Sexual assault or allegations
 - Sexual harassment or allegations
 - 2) Non-Disparagement Clause:* Provision that prohibits (or has that effect) an employee from making **negative statements about the employer** related to:
 - Allegations of sexual assault or sexual harassment (or disputes arising from the allegations)

HB 55: Employment Confidentiality Amendments

Rep. Kera Birkeland and Sen. Todd Weiler

- **Enforcement is Futile:** Even if you win the case...
 - Liable for all costs and attorneys fees to enforce it
 - Not entitled to monetary damages resulting from a breach
- **Government-Applicable Exemptions:**
 - You can still prohibit disclosure of the **settlement amount**
 - **At request of the employee**, you can still disclose facts that could reasonably lead to the **identification** of the **employee**
- Retroactively effective **January 1, 2023**

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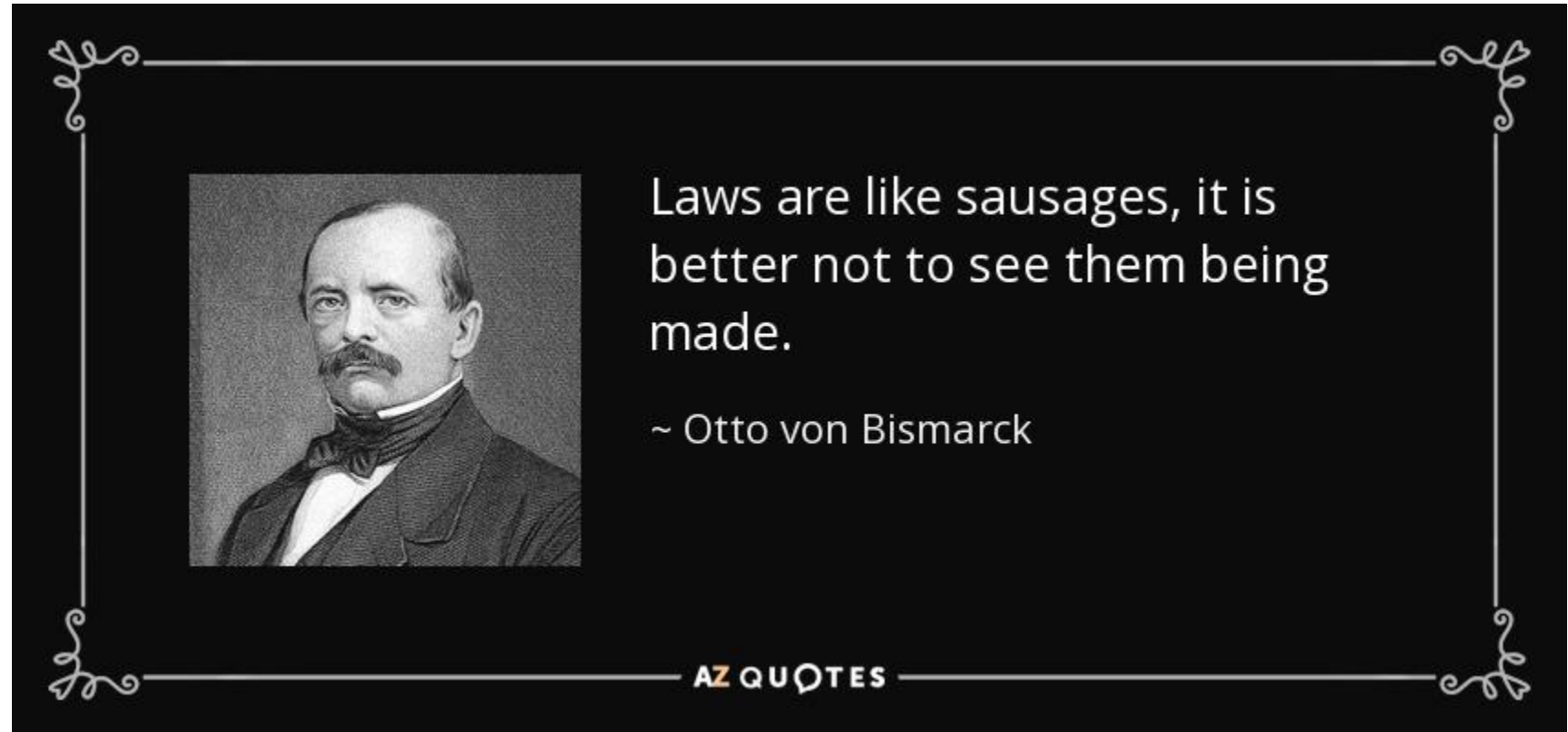
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Rep. Jefferson Moss and Sen. Kirk Cullimore



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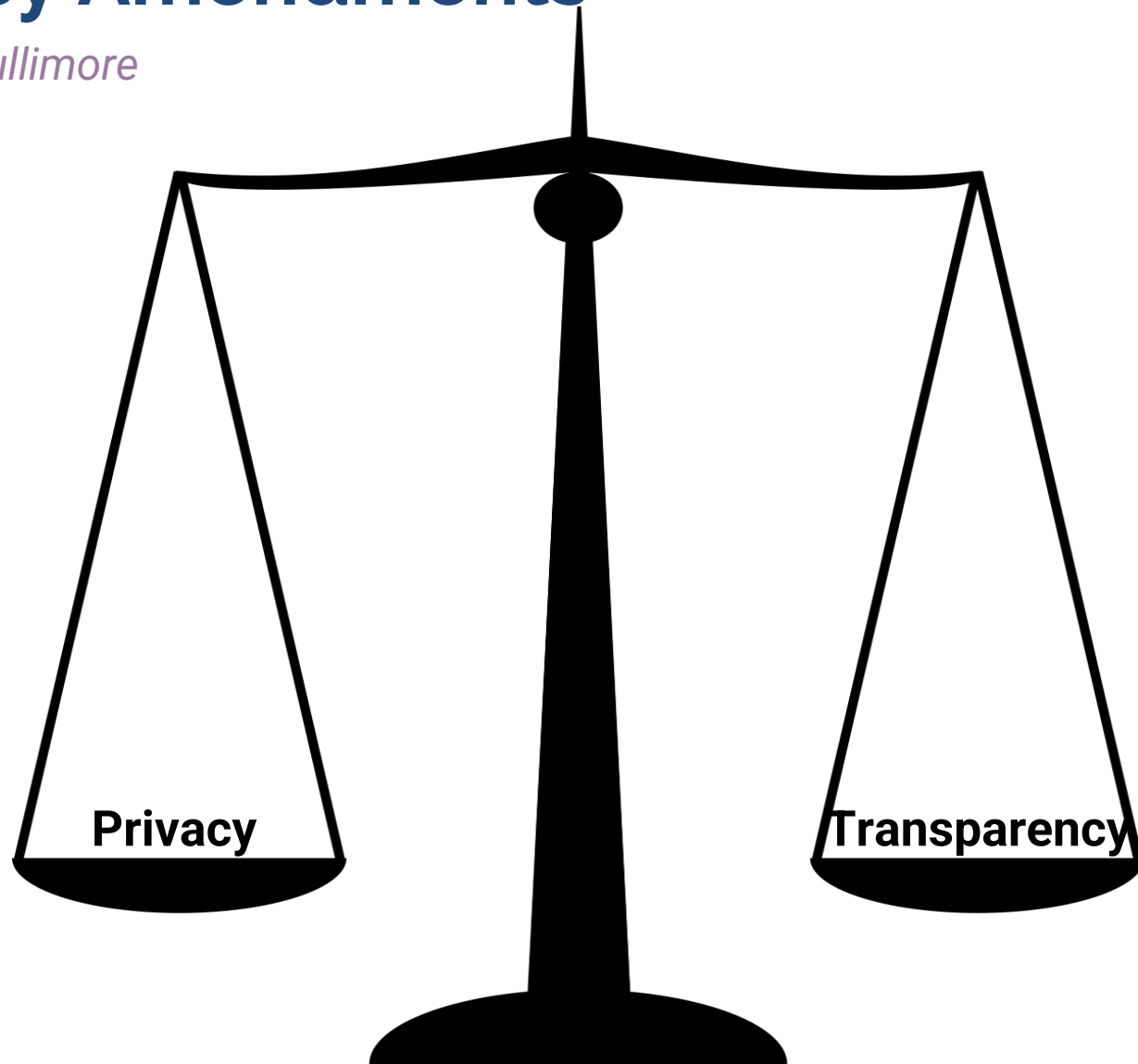
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HB 491: Data Privacy Amendments

Rep. Jefferson Moss and Sen. Kirk Cullimore

- Controlling laws
- Privacy Programs
- Required Reporting
- Data Breach Requirements
- Noticing Requirements
- Training Requirements
- Contract Requirements
- Remedies



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HB 491: Data Privacy Amendments

Rep. Jefferson Moss and Sen. Kirk Cullimore

- **Personal Data:** “Information that is linked or can be reasonably linked to an identified individual or an identifiable individual”
- **Process or Processing:** Operation or set of operations performed on personal data, including collection, recording, organization, structuring, storage, adaptation, alteration, access, retrieval, consultation, use, disclosure by transmission, transfer, dissemination, alignment, combination, restriction, erasure, or destruction.
- **BUT....**GRAMA overrides Part 4

HB 491: Data Privacy Amendments

Rep. Jefferson Moss and Sen. Kirk Cullimore

- **IMPORTANT DATES!**
- **May 1, 2024:** Meet requirements of HB 491 for all processing activities implemented after May 1, 2024
- **May 1, 2025:** Create a privacy program that includes policies, practices, and procedures for processing personal data
- **Before January 1, 2027:** If processing activities implemented before May 1, 2024 then:
 - Identify non-compliant processing activity
 - Document the non-compliant processing activity
 - Prepare a strategy for bringing the non-compliant processing activity into compliance with this part

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HB 491: Data Privacy Amendments

Rep. Jefferson Moss and Sen. Kirk Cullimore

- Annual report to state:
 - Types of personal data city/town currently shares or sells
 - Basis for sharing or selling personal data
 - Classes of persons and the governmental entities that receive the personal data
- Annual privacy training (and 30 days after start of employment):
 - Only employees that have access or part of their job duty to access personal data of individuals
- Contracts and renewals:
 - After May 1, 2024, contractors are bound by Part 4 in the same way that governmental entities are bound.
 - Suggestion: **Put provision in all new contracts or renewals!**

HB 491: Data Privacy Amendments

Rep. Jefferson Moss and Sen. Kirk Cullimore

- **Noticing (Already in GRAMA):** Personal data request notice when requesting or collecting:
 - Reasons the request for the personal data is made
 - Intended purposes of the data
 - Consequences for refusing to provide the personal data
 - Classes of persons and entities that share the personal data or receive the personal data from the governmental entity on a regular or contractual basis
 - Record series the personal data would be included in
- **Posting of Request Notice (Mostly in GRAMA):**
 - “Prominent place where the governmental entity collects the personal data”
 - Including on the actual form collecting the data; OR
 - Linking or displaying a QR code linked to an electronic version of notice.

HB 491: Data Privacy Amendments

Rep. Jefferson Moss and Sen. Kirk Cullimore

- Establish process to **amend** personal data after it has been collected by the government entity BUT
 - Not required to accept the amendment – just have to create the process to request
- **Data Breaches:**
 - Must notify Cyber Center and Attorney General of data breach no later than five days after discovery of the breach
 - Notification includes many different pieces of information – Refer to law
 - Notification to affected persons without unreasonable delay, but only have to after:
 - Determining the scope of the breach
 - Restoring the affected system
 - Notice to affected persons has a lot of requirements – Refer to law

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SB 185: Residential Building Inspections

Sen. Evan Vickers and Rep. Cal Musselman

Goal: Faster inspections without sacrificing quality

- Cities required to have Third-Party Inspection List:
 - First-Fourth Counties/Cities: At least 3
 - Fifth-Sixth Class Counties/Cities/Towns: At least 1
 - **Can include other city/town building inspectors
- Builder notifies city/town on fourth day of what building inspector it will use
- Third party inspector is paid by city/town after receiving approval and report by inspector
- City not held liable for inspections it does not perform

HB 518: State Construction Code Modifications

Rep. Thomas Peterson and Sen. Curt Bramble

- **Permitting Prohibition:** Prohibits denying permits based on noncompliant structure unrelated to the scope of the required permit on another structure
 - Exceptions: If completed less than 5 years before noticing it or poses a health, life, or safety concern
- **Enforcement Prohibition:** Prohibits political subdivisions from requiring resident to bring structure into compliance
 - Exception: If completed less than 10 years before enforcement or poses a health, life, safety concern
- **THIS DOES NOT AFFECT NONCONFORMING USES OR LEGALLY NONCONFORMING STRUCTURES [Grandfathered]. ONLY ILLEGAL STRUCTURES.**

SB 34: Utah Retirement Systems Revisions

Sen. Wayne Harper and Rep. Cheryl Acton

- Before SB34 URS participating cities already had requirements in terms of reporting, contributions, and certifications.
- SB34 Requires URS participating employers to maintain all records and certifications under the law
- If participating employer fails to fully comply with reporting, contribution, certification, or record keeping requirements, then:
 - they bare all liability and expense resulting from the failure **AND**
 - A penalty of an amount not to exceed 50% of the participating employer's total contributions for the time period of the error.

HB 251: Postretirement Reemployment Restrictions Amendments

Rep. Matthew Gwynn and Sen. Wayne Harper

- Bill does not impact current post-retirement reemployment rules (i.e., cancellation of retirement benefits if reemployed within 1 year of retirement, unless exception applies)
- Creates a new optional post-retirement reemployment with shortened cooling off period but it comes with additional conditions.
 - Cooling off period reduced to 90 days.
 - If general employee, there is a 20% reduction in retirement payments.
 - Public safety employees are subject to a 15% reduction.
 - COLA increase to retirement benefits is frozen during reemployment.
- Public employers who choose to hire employees participating in new 90-day track pay a higher URS rate for them.
- Effective: July 1, **2025**

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HB 261: Equal Opportunity Initiatives

Rep. Katy Hall and Sen. Keith Grover

- **Overarching Policy:** Restricts policies, programs, and initiatives that promote differential treatment based on an individual's race, color, ethnicity, sex, sexual orientation, national origin, religion, gender identity.
- Best digested in three parts:
 - Utah Code 67-27-105 (hiring and employment practices)
 - Utah Code 67-27-106 (training)
 - Utah Code 67-27-107 (discriminatory practices)

HB 261: Equal Opportunity Initiatives

Rep. Katy Hall and Sen. Keith Grover

Prohibition on Hiring and Employment Practices

- **Prohibition:** Bars cities from "requiring, requesting, soliciting, or compelling a ***prohibited submission***" before taking certain employment actions.
- **"Prohibited Submission"** means a submission, statement, or document that "requires" an individual to articulate their position, contribution, or experience with a "policy, program, or initiative that promotes differential treatment based on an individual's ***personal identity characteristics***" (*i.e. defined as race, color, ethnicity, sex, sexual orientation, national origin, religion, or gender identity*)
- **Exception.** Statement related to "bona fide occupational qualification"

HB 261: Equal Opportunity Initiatives

Rep. Katy Hall and Sen. Keith Grover

Prohibition on certain trainings

- **Prohibition:** "A governmental employer may not require prohibited training."
- **"Prohibited Training":** Means a mandatory instructional program and related materials that a governmental employer requires its current or prospective employees to attend that promote prohibited discriminatory practices.
 - Seminar (in-person or online)
 - Discussion group
 - Workshop
 - "Other program"
- **Two key elements** to being barred: (1) the training must be mandatory or required; **and** (2) it must promote "prohibited discriminatory practice."

HB 261: Equal Opportunity Initiatives

Rep. Katy Hall and Sen. Keith Grover

Prohibition of discriminatory practices

- **Prohibited Discrimination:** "A governmental employer may not engage in prohibited discriminatory practices."
- **Prohibited Discriminatory Practices (broader application):** Applies definition to all policies, procedures, programs, offices, and initiatives.
 - A TON OF EXAMPLES (See Next Slides)
- **Exclusions:**
 - Grant obligations that would require engaging in prohibited discriminatory practices.
 - Can have offices, divisions, employment positions, programs, initiatives, etc. to implement, develop, plan, or promote practices *relating to personal identity characteristics so long as they are not engaged in prohibited discriminatory practices.*

HB 261: Equal Opportunity Initiatives

Rep. Katy Hall and Sen. Keith Grover

Prohibited Discriminatory Practices

1. Asserts one "**personal identity characteristic**" (race, color, ethnicity, sex, sexual orientation, national origin, religion, or gender identity) is inherently superior or inferior to another;
2. That an individual is inherently privileged, oppressed, racist, sexist, oppressive, or a victim (whether consciously or unconsciously) because of their personal identity characteristic;
3. Asserts that someone should be discriminated against in violation of federal civil rights laws or otherwise, or receive beneficial treatment because of their personal identity characteristics;
4. Asserts an individual's moral character is determined by their personal identity characteristics;

HB 261: Equal Opportunity Initiatives

Rep. Katy Hall and Sen. Keith Grover

Prohibited Discriminatory Practices, cont.

5. Asserts that an individual bears responsibility for the actions committed by others in the past by virtue of their personal identity characteristics;
6. Asserts that an individual should feel discomfort, guilt, anguish, or other distress solely because of their personal identity characteristics;
7. Asserts that meritocracy is inherently racist or sexist;
8. Asserts that socio-political structures are inherently a series of power relationships and struggles among racial groups.

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Prohibited Discriminatory Practices, cont.

9. Promotes resentment between, or resentment of, individuals by virtue of their personal identity characteristics;
10. Ascribes values, morals, or ethical codes, privileges, or beliefs to an individual because of the individual's personal identity characteristics; and
11. Is referred to as diversity, equity, and inclusion

Exception: Trainings required by state or federal law, including laws relating to discrimination or harassment.

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SB 91: Local Gov't Officers Compensation

Sen. Chris Wilson and Rep. Paul Cutler

- **New Requirement:** Requires an independent stand-alone public hearing before a "compensation increase" for an "executive municipal officer" can be adopted in a final budget or final amended budget.
- **"Compensation increase"** means, (1) salary, (2) a budgeted bonus or budgeted incentive pay, (3) vehicle allowances; and (4) any deferred salary.
 - Does NOT include:
 - Gift cards.
 - Incentives or bonuses that are not budgeted for a specific person.
 - Etc.
- **"Executive Municipal Officer"** means :(1) City/Town Managers or CAOs; (2) Deputy City/Town Managers or CAOs; (3) City Attorney; (4) Department Heads; and (5) Deputy Department Heads.

SB 91: Local Gov't Officers Compensation

Sen. Chris Wilson and Rep. Paul Cutler

- **Application Examples:**

- **COLA:** Compensation increase for an "executive municipal officer."

- **Promotion into an executive municipal officer position:** Not a compensation increase for an "executive municipal officer."

- **New hire into an executive municipal officer position:** Not a compensation increase for an "executive municipal officer."

SB 91: Local Gov't Officers Compensation

Sen. Chris Wilson and Rep. Paul Cutler

- **Logistics:**
 - Hearing can occur in the same meeting as the general budget public hearing (gavel out/gavel in).
 - Hearing does not need to occur before the increase is actually implemented. Must occur before the increase is adopted in a final budget or amended final budget.
 - Bill does not require the "compensation increase" to be listed in any particular format.
- **Noticing:** Class A notice must be issued at least 7 days before the public hearing.
- **Effective May 1, 2024**

Social Media Policies/Free Speech

Lindke v. Freed

Factual Background:

- Freed created a personal Facebook account
- Years later, appointed as City Manager
- COVID 19 posts
- Deleted “derogatory” and “stupid” Facebook posts
- Blocked specific users from commenting

Court Finding: A public official’s social media activity constitutes state action under the law only if the official:

- 1) Possessed actual authority to speak on the State’s behalf and
- 2) Purported to exercise that authority on social media

Recommendation: 1) Review social media policies; 2) Review job descriptions; and 3) Perform training on an employee’s scope of authority to speak on behalf of the city/town

NON-HOUSING BILLS

HB 396

SB 150

HB 460

HB 257

SB 233

HB 55

HB 491

SB 185

HB 518

SB 34

HB 251

HB 261

SB 91

Lindke v. Freed

HB 367

SB 161/SB 562

HB 367: Local Government Fees Modifications

Rep. Karen Peterson and Sen. Wayne Harper

- **General fees are prohibited for:**

- Broadband*
- Public safety*
- Transportation*

*Exceptions

- **Exceptions:**

- If already impose a general fee before May 1, 2024, then **repeal** before July 1, 2025
- If already issued a bond before May 1, 2024, then **repeal** general fee within 60 days after the bond is paid
- If already impose general fee to pay for a bond issues before January 1, 2024 shall repeal the general fee within 60 days after bond is paid

DID NOT PASS!

NON-HOUSING BILLS

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HB 460

HB 257

SB 233

HB 55

HB 491

SB 185

HB 518

SB 34

HB 251

HB 261

SB 91

Lindke v. Freed

HB 367

SB 161/SB 562

HB 367: Local Government Fees Modifications

Rep. Karen Peterson and Sen. Wayne Harper

DID NOT PASS!

- **General Public Safety Fees**

- **Exceptions:**

- For towns and cities of the 3rd, 4th, and 5th classes, then can keep a general fee if the fee is to generate revenue to pay for the public safety service provided and 2) the public safety service is volunteer public safety service.

- All other general fees for public safety must be discontinued no later than July 2025.

- **Transportation Utility Fees**

- Provides requirements, including certain processes and studies done to impose/increase a transportation utility fee.

- Restricts what the utility funds can be used for

NON-HOUSING BILLS

HB 396

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HB 460

HB 257

SB 233

HB 55

HB 491

SB 185

HB 518

SB 34

HB 251

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PREEMPTION 101

SB 161: Energy Security Amendments

Sen. Derrin Owens and Rep. Carl Albrecht

SB 562: Utah Fairpark Area Investment & Restoration District

Rep. Ryan Wilcox and Sen. Lincoln Fillmore

Sheetz v. County of El Dorado

Impact Fees

Factual Background:

- Sheetz wanted to build a prefabricated home on his property
- Payment of 23k in traffic impact fees
- Sued the County arguing that it was an unconstitutional taking because the impact did not have any nexus to the project nor were the fees roughly proportionate to the impact

Court Finding:

- **Very limited!** Nollan/Dolan test applies to both administrative and legislative acts.
- **Holding not concerning, but** watch out for future legislation related to the concurring opinions
- **Did not decide issue: Whether an impact fee based on a formula applied to many property owners could still meet the Nollan/Dolan test (nexus & roughly proportional)**

Recommendation: Ensure impact fee study was recently updated and has accurate data.

HB 289: Property Rights Ombudsman

Rep. Kera Birkeland and Sen. Lincoln Fillmore

Goal: Compliance with Office of the Property Rights Ombudsman **advisory** opinions

Process:

- OPRO issues advisory opinion against you, AND
- District Court sides with advisory opinion

Then:

Court **may** award the substantially prevailing party reasonable attorneys fees and court costs

AND

If the Court finds that the city knowingly and intentionally violated the law it **may** award:

- \$250 per day (remnant of past law)
- Consequential damages

HB 476: Land Use Regulations Modifications

Rep. Stephen Whyte and Sen. Lincoln Fillmore

Land Use Task Force Items

1. Development agreements
2. Landscaping Requirements
3. Land Use Application Processing/Phasing of a Development
4. Design exceptions for overpressure zones
5. Landing/rear setbacks
6. Sidewalk phasing assurance bonds
7. Subdivisions clean up
8. Annexation Language

HOUSING BILLS

Sheetz v. El Dorado

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HB 476: Modifications – Development Agreements

Rep. Stephen Whyte and Sen. Lincoln Fillmore

- **Removes language** about disclosure of “clearly established state law”
- **Clarifies** that development agreements may not be required by a municipality if the developer is not requesting anything outside of what is already permitted
- **Limits** municipalities from recording certain documents that impose development requirements on land



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HB 476: Modifications – Landscaping Req.

Rep. Stephen Whyte and Sen. Lincoln Fillmore

- **Clarifies** that a certificate of occupancy may not be withheld because the homebuilder has not put landscaping in
- **Allows** a municipality to require a seller of a new residence to inform the first buyer of the new residence of the city's ordinance requiring waterwise landscaping



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HB 476: Modifications – Phasing of Development

Rep. Stephen Whyte and Sen. Lincoln Fillmore

- **Clarifies** that unless otherwise required in a development agreement, a municipality must accept and process a land use application without regard to any other separate and distinct land use application.

HB 476: Modifications – Overpressure Zones

Rep. Stephen Whyte and Sen. Lincoln Fillmore

- **Allows** municipalities to determine design standards IF the development is within a blast zone that would cause an explosion which could pose a risk of damage to a window, garage door, or carport of the facility
- Certain requirements to fit this exemption apply

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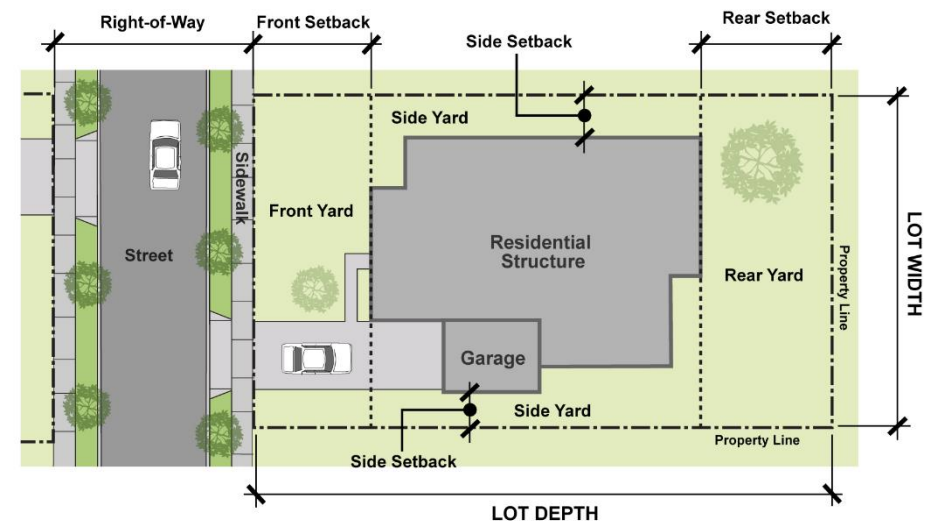
HB 465

HB 476: Modifications – Landings/Setbacks

Rep. Stephen Whyte and Sen. Lincoln Fillmore

- **Allows** landings and walkout porches to be located within the rear setback if:
 - No larger than 32 square feet in size
 - Used for ingress and egress from the rear
 - Is uncovered, connected to the rear of the dwelling

Does not apply to historic districts



HOUSING BILLS

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HB 476: Modifications – Sidewalk Phasing

Rep. Stephen Whyte and Sen. Lincoln Fillmore

- Prohibits requiring sidewalks to be completed prior to a building permit
- Prohibits cities from redeeming sidewalk assurance bonds prior to 18 months after issued
- Allows cities to require completion prior to the Certificate of Occupancy being issued
- Sidewalk phasing can skip, but must be installed for each residence before it may be occupied

****Only applies to single family homes and townhomes**



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HB 476: Modifications – Subdivision Cleanup

Rep. Stephen Whyte and Sen. Lincoln Fillmore

- Subdivision Improvement Plan submissions
- Preliminary vs. Final engineering plans
- Timing of reviews

Reminder: December 2024 deadline for cities with less than 5000 residents! Training and templates at ULCT.org



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New housing product

Modular Housing (SB 168)

New financing tools

- a) Infra districts (HB 13)
- b) PTIF (HB 572)
- c) FHIZ (SB 268)
- d) HOPZ (SB 168)
- e) HTRZ (SB 208)

Process updates

- a) Comm on Housing Afford. (HB 465)
- b) Land use task force (HB 476)



Partnership, not preemption
tell ULCT if you get asked for a tool

SB 208: HTRZ Amendments

Sen. Wayne Harper and Rep. Stephen Whyte

- Enhances the "but for" test
 - "data showing the cost difference between what type of development could feasibly be developed absent the HTRZ and the type of development that is proposed to be developed with the HTRZ tax increment"
- Consideration for owner-occupied housing
- Increases % of required affordable units
- Addresses phasing of housing units
- Increases HTRZ committee members
 - 1 more House, 1 more Senate, 1 more school district

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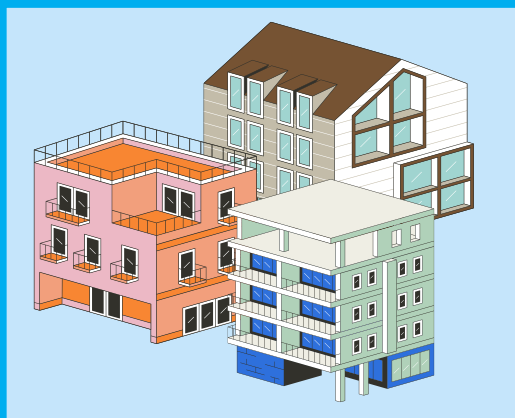
SB 168

HB 465

SB 268: First Home Investment Zone Act (FHIZ)

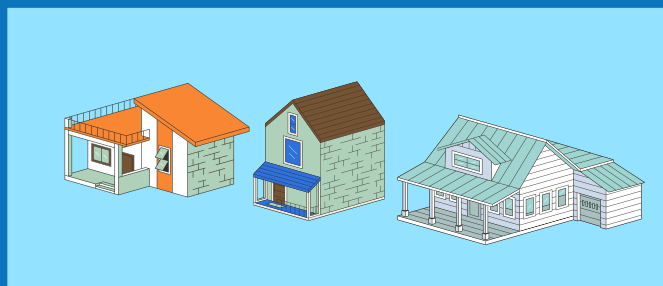
Sen. Wayne Harper and Rep. Cal Musselman

City option; proposal includes a center AND extra-territorial areas



FHIZ Center

51% of developable acreage within the center must be used for housing



Extra-territorial Areas

- Can count "extra-territorial" areas toward the housing requirements
- Extra-territorial housing units must meet density + affordable home ownership criteria
 - 6 units to acre
 - 100% owner-occupied
 - 20% affordable

Overall Project

- 30 units to the acre for overall project
- HTRZ committee approval, then up to 60% of tax increment for 25/45 years
- Parameters/caps in SL Co (11 FHIZs/HTRZs max; city can do FHIZ only if city's RDA does not have excessive unencumbered revenue in RDA)

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FHIZ Hypothetical Example

Assume an approx. 65-acre FHIZ zone development, plus related homes outside the zone.

Outside zone but within city:

- 500 homes, all owner-occupied. At least 80% (400) detached. Minimum density of 6 units per acre
 - *These homes "count" toward the density requirement inside the FHIZ*
- At least 20% of the 500 homes (100) are affordable

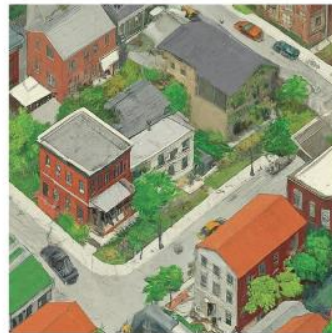
Inside FHIZ zone:

- 500 homes, with a mix of housing types
 - *Base requirement is 30 units per acre on 51% of developable land; so ~65 acres $\times .51 \times 30 = \sim 1000$ homes. But the 500 homes outside the FHIZ zone "count" toward the number of homes required inside the zone. So the required number of homes inside the zone is lowered to 500*
- At least 12% of the 500 homes (60) are affordable, at least 25% owner occupied (125)
- Mix of uses (residential, commercial, open space, etc.)

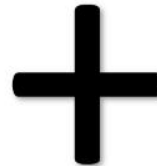
= 1000 new homes

= at least 625 owner-occupied homes (100% of homes outside the FHIZ zone, and at least 25% of homes inside FHIZ must be owner occupied)

= at least 160 affordable homes



500 new homes in FHIZ boundaries
At least 125 owner occupied
At least 60 affordable



Tax increment can be used for project development and related system infrastructure costs



500 new homes outside of FHIZ zone
All 500 owner occupied
At least 100 affordable

HB 572: State Treasurer Investment Acts

Rep. Robert Spendlove and Sen. Don Ipson; Steve Waldrip

Authorizes State Treasurer to invest up to \$300 million of state funds (TIF) as deposits to lenders for “qualified projects” (QPs)

- “Qualified project” = housing proposal with:
 - 60% sold at “first home” levels (\$450k)
 - owner-occupancy requirements for 5 years
 - Max of 75% of overall QP financing

HB 572: State Treasurer Investment Acts

Rep. Robert Spendlove and Sen. Don Ipson; Steve Waldrip

- **Financing:**
 - Treasurer offers loan at a rate no higher than 1.5% above fed funds effective rate at time of investment
- **Repayment:**
 - with interest at a rate equal to greater of fed funds effective rate minus 2%, and .5%
 - earlier of 24 months, loan repayment, or sale of last QP house

HB 13: Infrastructure Financing Districts

Rep. Jim Dunnigan and Sen. Kirk Cullimore

Creates a type of special district to finance public infrastructure

- **Key point:** property owners must have land use approval
- IFDs are created by petition with **consent of 100% of the surface property owners.**
- Governed by an appointed board.
- IFDs may issue bonds to pay for infrastructure on the public bond market to access lower interest rates.
- IFDs are authorized to impose a **.0004 property tax mill levee**
- Bonds are repaid through an assessment on each residence.

HB 13: Infrastructure Financing Districts

Rep. Jim Dunnigan and Sen. Kirk Cullimore

Creates a type of special district to finance public infrastructure

- **Protections for city/residents:**
 - **Must** have land use approval
 - Infrastructure must be **built to city standards**
 - Assessments must be paid prior to C of O issuance
 - Property tax may not be used to repay the bonds
 - Districts dissolved within 180 days of debt repayment

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SB 168: Affordable Building Amendments

Sen. Lincoln Fillmore and Rep. Stephen Whyte

Commission on Housing Affordability/Unified Economic Opportunity Commission bill:

Three major components:

1. Defines the regulatory process for modular (pre-fabricated) building construction.
2. Authorizes the Home Ownership Prosperity Zone (HOPZ) tool.
3. Makes technical changes to the First Time Homebuyer Assistance Program and real estate reinvestment covenants

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1. Defines the regulatory process for modular (pre-fabricated) building construction

Goal: Affordable home ownership through lower building costs and faster construction

- Built off-site
- Local building official performs plan review of onsite elements only
- Constructed and inspected offsite by manufacturer
- Each phase of production inspected by a Utah-licensed third party inspector with a combination license
- Modular is transported to building site and assembled onsite
- City inspects onsite elements (foundation, assembly of modular, etc.)

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2. Home Ownership Prosperity Zone (HOPZ) tool.

Optional tax increment tool for cities

Criteria:

- Zone is **less than 10 contiguous acres**
- Cities must zone for at least **6 units per acre**
- **60% of the housing units must be at 80% of the county median sales price**
- All housing units must be **owner-occupied for at least 5 years**

Tax increment:

- Other taxing entities are required to participate
- 60% of increment for system or project infrastructure for up to 15 years

Parameters:

- Only 50 acres per school district of only one city
- Only 100 aggregate acres
per school district of 2+ cities

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3. Makes technical changes to the First Time Homebuyer Assistance Program and real estate reinvestment covenants

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HB 465: Housing Affordability Revisions

Rep. Stephen Whyte and Sen. Lincoln Fillmore

Commission on Housing Affordability/Unified Economic Opportunity Commission bill:

Two major components:

1. MIHP report changes
2. CRA/RDA set-aside changes

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1. Moderate Income Housing Plan Revisions

- No substantial changes to menu items or reporting timelines
- Reports will now include zoning maps (or links to them) and number of entitled units
 - **Objective:** better understanding of 190k planned for and unbuilt housing inventory pipeline
 - Take the data collection seriously

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2. CRA/RDA Set-aside Changes

- Housing set aside flexibility - set aside funds may be spent in nearby communities (w/ interlocal agreement) and on owner occupied affordable (<120% AMI) product
- Set aside funds must be spent, encumbered, or otherwise planned for within six years of the set aside funds being deposited
 - Year 1 set-aside funds must be planned for/encumbered/spent by year 6, year 2 funds by year 7, etc.

Other technical changes to tax credit program, POTM land authority, and DWS housing grant pass through administration

Other Bills of Interest

- SB 13 Education Entity Amendments
- HB 188 Modifications Relating to the Use of Land
- HB 256 Military Compatible Land Use Amendments
- HB 562 Utah Fairpark Area Investment & Restoration District
- HB 77: Division of Human Resources Management Amendments
- HB 228: Public Employee Leave Amendments
- HB 271: Law Enforcement Employee Overtime Amendments
- HB 411: Local Gov't Entity Drug Free Workplace Policies Amendments
- HB 84 School Safety Amendments

Work Groups

- Annexation/incorporation
- Fees (transportation utility)
- Gravel Pits
- MIHP data collection, next steps
- Noticing Provisions
- Storm water (HB 507)
- Subdivisions for non-MIHP communities (Dec 31 deadline)
- Tax increment financing
- 2025 deadline for water conservation elements in general plans
- 2025 deadline for station area plans
- UEOC Items
- Impact Fees
- School Safety
- Elections
- Artificial Intelligence
- Cyber Security Plan and Funding
- Law Enforcement/Criminal Justice
- Water Credits/Exactions
- Boundary Line Agreements
- Conditional Land Use Ordinances
- Municipal Incorporation Process
- Revenue and Taxation Issues
- URS/Benefits Issues

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SLIDO QUESTIONS