

## GENERAL SESSION

February 15, 2017

### ***Program Topics: State Land, Federal Land, Telehealth***

**Presented by: NATURAL RESOURCES COMMITTEE & HEALTH AND HUMAN SERVICES**

#### **Speakers:**

Sen. Gene Davis (D), District 3

Rep. Greg Hughes (R ), District 51

Rep. Ken Ivory (R ), District 47

Marina Lowe, Legislative and Policy Counsel ACLU of Utah



#### **SB105 Sale of State Lands Act**

In recent years the state has made plans to sell land for development, most notably the land that is currently occupied by the state prison (which sits on land that was purchased

*Sen. Davis*

in the 1940s while the prison was still located in Sugar House). The land for the state fair, which was donated to the state "in pioneer times" explicitly for the fair, has also been considered for sale to developers. Sen. Davis would like to establish a process of first thinking about the best use of the land and generally favoring leasing over selling. Under the provisions of the bill, the legislative management committee would review potential leases or sales using this criterion. The SITLA group has such a process.

Sen. Davis pointed out that land appreciates in value, and the state might generally benefit from leasing unused

parcels rather than selling them for a one-time gain.



#### **HCR11 Concurrent Resolution to Rescind Bear's Ears Monument**

The resolution tells the US President that Utah's Federal delegation, the Utah legislature, the San Juan County Commission, cities within San Juan County, and county

*Rep. Hughes*

commissioners within the county stand shoulder-to-shoulder in opposition to the national monument designation. They felt that the process that led to the current designation did not give them a sufficient voice.

Rep. Hughes traveled to San Juan County to hear local opinions. He heard from Navajo Nation members who opposed the monument, and he said that the Native Americans who oppose the monument are the ones who actually live in the area.

The encumbered area encompasses 1.3M acres. He felt that the local community is well-prepared to identify areas that need help in protecting antiquities, and there is no need to protect such a large area with national monument status.

He compared the local emotion surrounding the monument designation with the feelings about relocating the homeless shelter in Salt Lake City.

He would like to have the state and local leaders find common ground for managing the area and leave the Federal government out of the process. Local people can more easily get together and hammer out plans.

A WSLC member asked if the state, should it get control of the monument land, would sell it. Rep. Hughes replied that Utah spends about \$5M per year on conservation efforts, and that money comes from the careful management of SITLA state lands. The plan is based on a multiple use philosophy. The hunting tags in Utah bring in higher prices than in Colorado, and that speaks to good wildlife management that benefits the state.

WSLC member Josie Valdez made a statement about the reaction of Native Americans in Utah to HCR11. There is a lot of emotion surrounding the perceived victory of getting the protections to their ancestral lands that are afforded by monument status, only to have it threatened by "a bunch of white men". Hughes replied that he saw Navajo people crying in despair over the impending monument status. He said that there had been meetings with representatives of the Navajo nation, and their voices were heard. He understood that there was a perception that the legislature was imposing its views on the Navajos, but that it was a false narrative that needed to be addressed.

In response to a question about looting of ancient artifacts by residents of San Juan County, Rep. Hughes warned against broad-brush characterizations of the people. He said that he had been told that such accusations were made to demonize people, but he noted that he himself was unaware of any specific cases.

Rep. Hughes commented that about 65% of the land in Utah's borders is owned by the Federal government. He said that the area of the national monuments is disproportionately large compared to the area of some national parks. He also disputed the value of some of the allegedly protected assets. He believes that there is a mutual desire between the state and other stakeholders to cooperate in protecting objects of antiquity.

In contrast, Sen. Davis spoke about the history of the Bears Ears land ownership issues. He commented that the Senate Democratic Caucus was contacted by the Ute tribe about Sen. Bishop's plans for his Public Lands Initiative (PLI). There is a longstanding dispute about the ownership of some the land within that area; it is SITLA land but the Ute tribe claims it. There are intricate ownership issues surrounding possible SITLA land swaps associated with that area and the creation of the Bears Ears National Monument. He believes that the monument status is good for the state and has opposed HCR11.

He commented on the history of the land ownership within the state boundaries. At the time of statehood, land that was not irrigable was considered worthless. It seemed like a good idea to leave management of it to the Federal government. When oil and other resources were discovered on it, the state began to covet the land and to regret the ownership agreement underlying its Enabling Act.



## HB154 Telehealth Amendments

Modern communication methods make it possible for doctors to consult with patients in rural areas who would not otherwise have access to medical

*Rep. Ivory* specialists. Rep. Ivory told the group that although doctors could do amazing things through technology and telemedicine, they had no guarantee of being compensated for their services because remote consultations are not always reimbursed at the same rate as in-person visits. On the other hand, telehealth visits might be a cost-saving efficiency that would be harmed by a mandate of “parity” in payment.

As a first step in addressing the payment issue, HB154 mandates that when the state is the payer, mental health services administered through remote access will be compensated.

His bill would change Utah's medical assistance program to require providers to be transparent in stating whether or not they covered telehealth services and would make several other changes to the existing telehealth act. [Ed. One such change is the removal of the requirement for a secure communication method for the remote services.]

The original form of the bill prohibited the prescription of any abortion inducing drug if the consultation was done remotely. This was removed from the bill when it was discussed in the Senate. because Sen. Shiozawa felt that it tied together a political issue with the important issue of expanded access to healthcare.

Rep. Ivory said that he had included the prescription limitation because it conformed with FDA guidelines. He said that the risks of drug-induced abortion

were higher than surgical abortion, and he was surprised that there was opposition to the prohibition. Although he said that the bill would have prevented a physician from being compensated for issuing such a prescription, the language of the bill seemed to have been an absolute prohibition.

The FDA information can be found in the online document: [FDA Guidelines for Prescribing Mifeprex](#).



*Marina Lowe*

Marina Lowe of the Utah ACLU spoke about the legal issues surrounding the original bill's prohibition against prescribing abortion drugs. She noted that this is the second year in a row that the bill has been introduced.

In her view, the abortion restriction that was previously in HB154 is unconstitutional, and she cited recent cases to support that view. The current Supreme Court ruled 5-3 against Texas laws that limits access to abortion clinics and providers.

The court determined that some Targeted Regulation of Abortion Providers (TRAP) regulations which purport to protect women's health do nothing more than impede their access to abortion and provide no actual health benefits. This makes the restrictive regulations unconstitutional.

Idaho had a similar restriction in their telehealth bill that was recently struck down by a court. The Iowa Supreme Court also struck down a similar law.

Despite this, Rep. Ivory had argued that 19 states have restrictions of this sort and that his original telehealth bill was on solid legal footing. Lowe took issue with

this and said that those states were likely to see successful challenges in the future.

She also said that telehealth gave women the opportunity to seek options earlier in their pregnancy, and that in itself was a positive factor in their health outcome expectancy.

Several doctors spoke to the senate committee about their concerns regarding the restrictions, but the bill passed out of committee anyway. The amendment to remove the abortion restriction was made from the floor by Sen. Shiozawa who wanted to make sure that the benefits of telehealth could be available without encumbering it with legally risky language. He indicated that he would possibly help with a separate bill to achieved restrictions on abortion.

A WSLC member asked what the rest of the bill addressed, and Lowe demurred, saying that it was only the abortion restriction that concerned the ACLU.

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This Bulletin is a publication of  
The Women's State Legislative Council of Utah, Inc.  
<http://www.wslcofutah.org>

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*Printed by AlphaGraphics  
117 West 900 South  
Salt Lake City, UT 84101*