

UTAH FOUNDATION

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Utah Ballot Propositions, Initiatives and Referendums

On 7 November 2000, Utahns will have the opportunity to vote for president of the United States, candidates for all three seats in the U.S. House of Representatives, one U.S. Senate seat, governor, all seats in the state House of Representatives, one half of the state Senate, Salt Lake County mayor, and numerous county commission seats. In addition, voters throughout the state will vote on two propositions and two initiatives as well. In the Salt Lake, Weber and Davis counties, citizens will vote on a referendum dealing with a sales tax increase for mass transit. Lastly, voters in Salt Lake and Davis counties and in the city of Logan will vote on a referendum on water fluoridation.

Below is an analysis of each proposition, initiative and referendum, beginning with a **Short Description**, followed by **Background** information, and a short **Summary**. As usual, Utah Foundation does not endorse or oppose any of the propositions, initiatives, or referendums but hopes that Utahns will study them and make informed decisions.

PROPOSITIONS

Propositions are proposed changes to the Utah Constitution. These propositions are first passed by a 2/3 majority of the Utah Legislature as *Resolutions*. Having been passed by the legislature, they must then be approved by voters at the next general election. If approved by voters (simple majority), they become part of the Utah Constitution.

Proposition 1

Shall the Utah Constitution be amended to:

1. modify terms used to identify certain local government entities;
2. expand the types of services special service districts may be authorized to provide;
3. Authorize the legislature to provide for the creation of local government entities in addition to counties, municipalities, school districts, and special service districts;
4. modify county seat and optional forms of county government provisions;
5. Require the legislature to provide in statute for municipal dissolution;
6. clarify election provisions;
7. modify the exclusive uses of specified highway revenue;
8. repeal language that is redundant or obsolete relating to state and local government?

Short Description

Proposition 1 amends and enacts several provisions in Articles I, IV, VI, XI, XIII, and XIV; and repeals Article XII, Section 8, and Article XIV, Section 8 of the Utah Constitution. Most of the changes deal with issues concerning Utah's local governments, namely, counties, cities and towns. The proposition amends 11 sections, enacts three sections, and repeals two sections of

UTAH FOUNDATION is a private, nonprofit public service agency established to study and encourage the study of state and local government in Utah, and the relation of taxes and public expenditures to the Utah economy.

the Constitution¹. These proposed changes have been unanimously recommended by the Constitutional Revision Commission,² which has the responsibility to review the Utah Constitution and make recommendations to the governor and legislature that will make the Constitution current and functional. The proposition passed both houses of the legislature. The vote was as follows: Senate (29 members) Yeas 23, Nays 4, Absent 2. House (75 members) Yeas 62, Nays 0, Absent 13.

Article I, Section 4

This section is amended by repealing a sentence that states, “No property qualification shall be required of any person to vote, or hold office, except as provided in this Constitution.” The same protection is provided in Article IV, Section 7 of the Constitution. The repeal eliminates the duplication.

Article IV, Section 9

This amendment states that general elections will be held in all even-numbered years. They are held now in even-numbered years though it does not say so in the Constitution. It also substitutes the terms “municipal and school officers” with “officers of each city, town, school district and other political subdivision of the State.” The latter is a more specific explanation of which local elected officials’ terms start on the date stated in the law.

¹ Usually Utah Foundation shows the actual language of the Articles being proposed for change and the changes that are being proposed. This proposition is simply too long to do that. Instead we have cited each section of the article being proposed for change, briefly discussing the changes.

² The Constitutional Revision Commission is a statutorily created, bi-partisan group of citizens and elected officials who advise the legislature and governor on matters regarding the Utah Constitution. See Utah Code Annotated 63-54-1.

Articles VI, Section 1

The amendments to the above section are organizational in nature and not substantive except for one. This amendment repeals a provision which protected laws passed by the Legislature by a two-thirds majority from being subject to the referendum process. Now, any law passed by the legislature can be challenged by that process.

Articles VI, Section 29

This amendment makes only small changes by eliminating the term “township” (which is no longer a form of government in Utah) from the prohibition of government, namely state, county, city, town, or district, that may not “lend its credit or subscribe to stock or bonds” to private enterprises. However, it does provide, in accordance with Article X, Section 5, that the state may guarantee the debt of school districts. The ability to guarantee school district debt is the result of a constitutional amendment passed by voters in the 1996 general election.

Article XI, Section 1

Article XI is titled the *Counties, Cities and Towns*. This section recognizes the counties as legal subdivisions of the state (the term Territory is deleted) and then adds language that gives powers to the counties that they have had for some time by statute but not in the Constitution. Section 5 of this Article provides a list of powers given to cities but counties are not included. The amendment provides the following powers for counties:

- a. levy, assess, and collect taxes, borrow money, and levy and collect special assessments for benefits conferred;
- b. provide services, exercise powers, and perform functions that are reasonably related to the safety, health, morals, and welfare of their inhabitants, except as the Legislature limits or prohibits by statute.

Article XI, Section 2

This section deals with moving a county seat. It requires that a two-thirds vote of the people of the county at a general election is necessary to move the county seat. The amendment makes no substantive change to this requirement. The wording is changed to clarify only.

Article XI, Section 4

This section requires the legislature to provide by statute optional forms of county government that counties may adopt by voter approval. The amendment repeals language that requires local governments to “provide for precinct and township organizations.” The state no longer has precincts and townships. Therefore, these changes are needed to keep the Constitution current.

Article XI, Section 5

These proposed changes are not policy changes but changes that modernize and clarify the Constitutional language relating to the incorporation of cities and towns.

Article XI, Section 7

This section is a proposed addition to the Constitution. It gives the Legislature the right to authorize counties, cities and towns to establish special service districts “within all or any part of the county, city, or town, to be governed by the governing authority of the county, city, or town, and provide services as provided by statute; ...” and to authorize these districts to levy property taxes and bonds upon the approval of voters. The Legislature has already provided for local governments to create such districts, but the power to do so has not been stated in the Constitution.

Article XI, Section 8

This section is a proposed addition to the Constitution. It authorizes the Legislature to establish political subdivisions “in addition to counties, cities, towns, school districts, and special service districts, to provide services and facilities as

provided by statute.” The kind of new political subdivisions is not stated.

Article XI, Section 9

This section is a proposed addition to the Constitution, but replaces *Article XII, Section 8* which will be repealed if this proposition is approved. The proposed amendment makes only clarifications in the Article.

Article XIII, Section 5

This amendment states that the Legislature cannot “impose taxes for the purpose of any city, county, town, or school districts . . . ” but eliminates the term “municipal corporation” in this list. The reason is that the list is complete and the term is no longer necessary.

Article XIII, Section 13

This section dedicates all “proceeds from the imposition of any license tax, registration fee, driver education tax, . . . and from any “excise tax on gasoline . . . for road and highway maintenance and construction and the driver education program. The amendment adds to the list “the payment of the principal of and interest on any obligation . . . ” issued for highway purposes. Using gas taxes for the paying of bonds is standard procedure. This change simply makes the practice part of the Constitution. Deleted from the section is the right to use such proceeds for promotion of tourism.

Article XIV, Section 3

This section states that no local government may incur debt “in excess of the taxes for the current year . . . ” unless the proposition to create such debt has been submitted to a “vote of such qualified electors as shall have paid property tax therein . . . ” The change eliminates the reference to voters being those who paid property taxes. The new language states that the debt cannot be incurred unless the “proposition to create the debt has been submitted to a vote of qualified voters . . . ” The change eliminates the requirement

that only those who paid property taxes may vote, since such qualifications are now unconstitutional. Property ownership as a qualification for voting is eliminated as it should have been long ago.

Article XIV, Section 8

The proposition proposes to repeal this section. It is replaced by Article XII, Section seven previously discussed.

Summary

Proposition 1 makes numerous changes to several Articles in the Utah Constitution. However, most of the changes deal with Article XI *Counties, Cities and Towns*. Most of the changes are not substantive. They simply clarify and modernize many sections. Others make amendments that recognize existing practices that have been authorized by statute but are now being included in constitutional language. As stated previously these proposed changes have been unanimously recommended by the Constitutional Revision Commission, which has the responsibility to review the Utah Constitution and make recommendations to the governor and legislature that will make the Constitution current and functional.

Proposition 2

Shall the Utah Constitution be amended to: establish a permanent state trust fund consisting of tobacco settlement money designated by statute or appropriation and specified private donations, income from the trust fund to be deposited into the state's General Fund and the principle to be preserved in the trust fund unless the governor and three-fourths of both the Senate and House of Representatives agree to remove money or assets from the trust fund for deposit into the state's General Fund?

Short Description

Proposition 2 amends the Utah Constitution by establishing a permanent trust fund whose assets are to be invested by the state treasurer, "for the

benefit of the people of the state in perpetuity." The revenue to be deposited into the trust fund will come from two sources: 1) the portion of the annual payments from the tobacco companies made to the State of Utah and currently designated to the Tobacco Settlement Endowment; 2) any money that the trust fund receives through will or other private donation. Clearly, the use of the tobacco settlement money is the reason for the creation of the trust fund. Because of the state's participation in the law suit that brought the settlement about, the state is expected to receive \$900 million over the next 25 years.

If created, only 50 percent of the income, or interest earned each year from investing the principle, may be spent through legislative appropriation. The balance remains in the fund. Only when the governor and three-fourths of each house of the state legislature agree can the assets (principle) of the fund be removed and spent.

Background

In September 1996, Utah's Attorney General Jan Graham filed a law suit against the tobacco companies to recover the medical costs associated with smoking incurred by the state. In doing so, Utah became the twelfth state to file such a suit. In November 1998, the tobacco companies agreed to a settlement that will pay \$206 billion over the next 25 years to the states that filed suit. It is expected that Utah's portion will be approximately \$900 million over the next 25 years. One of the important decisions that has to be made is what to do with the payments that states will receive.

In the 1999 session, the legislature passed *Senate Bill 15*. This law created the Tobacco Settlement Restricted Account and the Tobacco Settlement Endowment. For the first three years, the settlement moneys are split evenly between the Restricted Account (this money is spent by the legislature) and the Endowment (this money cannot be spent but is a permanent fund). Then beginning in fiscal year 2003, 60 percent of the annual payments go into the Endowment Fund and 40

percent into the Restricted Account.

In addition to *Senate Bill 15*, the legislature passed *Senate Joint Resolution 14*, which is *Proposition 1* on the November ballot. If passed, the proposition will create a constitutionally protected permanent trust fund for the portion of the tobacco settlement payments that are currently dedicated to the Endowment Fund. The Endowment Fund would then in essence be dissolved.

The portion of tobacco money currently designated to the Restricted Account would still go into this account annually. In the 1999 legislative session, the legislature appropriated the Restricted Account funds to several programs: \$5.5 million to the Children's Health Insurance Program; \$4 million for alcohol, tobacco, and other drug prevention, reduction, cessation, and control programs; \$4 million to the University of Utah Health Science Center; \$1.3 million to the Department of Human Services and \$194,000 to the Administrative Office of the Courts for expansion of a drug court program; and \$77,400 to the Board of Pardons, \$350,900 to the Department of Human Services, and \$81,700 to the Department of Corrections for a drug board pilot program. It appears to be the intent of the Legislature that these agencies and/or programs will continue to receive annual funding from the Restricted Account in the amounts stipulated as long as there are adequate tobacco settlement payments.

Proponents of Proposition 1 argue that the permanent fund is needed to prevent the tobacco funds from being spent on "on-going" programs, thus creating a dependency that will have to be funded by other tax revenue if (or when) tobacco payments end.³ They argue that placing half of the tobacco settlement payments (60 percent beginning

in FY 2003) is prudent and still allows half of the tobacco settlement funds (40 percent beginning in FY 2003) to be appropriated for health related programs which focus on drug prevention and cessation programs. In addition to the money going into the Tobacco Restricted Account, the Legislature is authorized to appropriate one-half of the interest earnings from the permanent fund. Proponents argue that this is a significant commitment to the spirit of the tobacco settlement.

Opponents argue that the way the Legislature is handling the tobacco settlement money goes against the whole idea of the law suit. They argue that, "Saving Utah's tobacco money for a 'rainy day' shows total disregard for Utah's growing youth tobacco problem."⁴ They point out that they support "saving a portion of Utah's settlement proceeds for the future . . ." but to "designate 50 percent of the money to the fund is penny-wise but pound foolish." The purpose of the lawsuit was to get tobacco companies to accept some responsibility for the medical costs they impose on the public. The payments agreed to by the tobacco companies were to act as a reimbursement of sorts to the public. With so much of the funds going into the permanent fund, where only half of the interest can be spent, the state cannot make the kind of commitment necessary to address Utah's growing youth tobacco problem.

Summary

The proposition, if approved by voters, creates a permanent fund that will receive the portion of the tobacco payments currently designated to the Tobacco Endowment Fund (50 percent now and increasing to 60 percent in FY 2003). It is estimated by the Legislative Fiscal Analyst that \$17.9 million will be transferred to the permanent fund January 2001 if voters approve Proposition 2. The advantages of the permanent fund are twofold:

³ The settlement goes in perpetuity, as long as the tobacco companies are in existence, they are obligated to pay the states. However, the annual payments are set for only the next 25 years.

⁴ *Voter Information Pamphlet*, Lieutenant Governor's, Office State of Utah.

1. the tobacco payments will become a continual and growing source of revenue for the state (unless by three-fourths vote, the legislature chooses to spend it).
2. the portion of the tobacco settlement money that goes into the permanent fund is constitutionally protected. By contrast, the money that currently is being appropriated to the Endowment Fund (the same money that will go into the permanent fund if this proposition is approved) can be appropriated by changing the law which only requires a simple majority of the legislature.

The disadvantages of creating the permanent fund and placing the tobacco payments into it appear to be:

1. only 50 percent now and only 40 percent beginning in 2003, plus one-half of the interest from tobacco payments can be used for funding tobacco or other drug cessation, prevention or control programs; and
2. there is no guarantee that the interest earnings from the trust fund will go to tobacco related programs. The Legislature has the power to appropriate this money for anything.

In short, if the proposition passes the permanent fund is created and only one-half of the interest can be spent. If the annual tobacco payments continue, the fund will grow each year thus providing a larger interest payment for legislators to appropriate. However, the interest payment is unlikely to ever be very large relative to the size of the General Fund. If the proposition fails, the Restricted Fund and the Endowment Fund continue with half of the tobacco payments going into each fund annually, until 2003, when the split goes to 60 percent and 40 percent with the Endowment Fund getting the larger share.

INITIATIVES

In addition to the two propositions, Utahns will vote on two initiatives. Initiatives are proposed laws or changes to existing laws. In order for an initiative to be submitted directly to voters, supporters of the initiatives must accomplish two things:

1. get signatures of registered voters “equal to 10% of the cumulative total of all votes cast for all candidates for governor at the last regular general election at which a governor was elected; and”
2. “from at least 20 counties, legal signatures equal to 10% of the total of all votes cast in that county for all candidates for governor at the last regular general election at which a governor was elected.”

The two initiatives on the ballot have met these requirements.

Initiative A - English as the Official Language of Utah

Short Description

Initiative A would make English the official language of Utah. The proposed law states that “English is declared to be the official language of Utah. As the official language of this State, the English language is the sole language of government, except as otherwise provided” As the official language of government, “all official documents, transactions, proceedings, meetings, or publications issued, conducted, or regulated by, on behalf, or representing the state and its political subdivisions shall be in English.”

The proposed law provides the following exceptions, by stating, “languages other than English may be used when required:

1. by the United States Constitution, the Utah State Constitution, federal law, or federal regulation;
2. by law enforcement or public health and safety

- needs;
3. by public and higher education systems according to rules made by the State Board of Education and the State Board of Regents;
 4. in judicial proceedings, when necessary to insure that justice is served;
 5. to promote and encourage tourism and economic development, including the hosting of international events such as the Olympics; and
 6. by libraries: to collect and promote foreign language materials; and provide foreign language services and activities.

Unless exempted by these provisions, “all state funds appropriated or designated for the printing or translation of materials or the provision of services or information in a language other than English shall be returned to the General Fund.”

Section 5 of the Initiative states, “The State Board of Education and the State Board of Regents shall make rules governing the use of foreign languages in the public and higher education systems that promote the following principles:

1. non-English speaking children and adults should become able to read, write, and understand English as quickly as possible;
2. foreign language instruction should be encouraged;
3. formal and informal programs in English as a second language should be initiated, continued, and expanded; and
4. public schools should establish communication with non-English speaking parents of children within their systems, using a means designed to maximize understanding when necessary, while encouraging those parents who do not speak English to become more proficient in English.”

The proposed law concludes, “Nothing in this section affects the ability of government employees, private businesses, non-profit organizations, or private individuals to exercise their rights under:

1. the First Amendment of the United States Constitution; and
2. Utah Constitution, Article 1 Sections 1 and 15.

The First Amendment to the U.S. Constitution guarantees citizens the right of free speech. Section 1 of the Utah Constitution guarantees citizens several “inherent and inalienable rights” such as the right to “communicate freely their thoughts and opinions”⁵ Section 15 of the Utah Constitution guarantees citizens “freedom of speech and of the press.”⁶

Background

For some time, individuals and organizations have been working to make English the official language of the country, by proposing both a national law and state laws. In 1996, the U.S. House of Representatives passed H.R. 123 which made English the official language of the United States. The U.S. Senate failed to act on the legislation before their recess. Though no English as the Official Language law has yet passed Congress, 25 states have passed such laws. Twenty of these states have passed them since 1980.⁷ However, many of these state laws simply

⁵Constitution of Utah, Article 1, Section 1, states, “All men 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 to protest against wrongs., and petition for redress of grievances; to communicate freely.”

⁶ Constitution of Utah, Article 1, Section 15 states, “No law shall be passed to abridge or restrain the freedom of speech or of the press. In all criminal prosecutions for libel the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.”

⁷ The following states have passed English Only laws: Alabama (1990), Alaska (1998), Arkansas (1987), California (1986), Colorado (1988), Florida (1988), Georgia

state that English is the official language of the state and do not impose requirements on governments regarding publishing all documents in English as would Utah's if this initiative passes. Three states with more restrictive English as the Official Language laws have been sued: Alabama, Alaska, and Arizona. The law suits are still pending in Alabama and Alaska. Arizona's law was invalidated in 1998 by its state Supreme Court.

Proponents of the initiative argue that there needs to be a common language for the nation that will be the tool that ties all our diverse peoples together into one common citizenship. They argue that in many states and at the national level government documents are printed in many languages thus allowing people to get driver's licenses, go to school, pay their taxes, and vote in their native tongue. Proponents argue that this makes it too easy for immigrants to live in the United States without ever learning to speak English. Requiring all government documents to be in English will encourage immigrants to learn the language of their new country. Proponents emphasize that their proposal is not racist or ethnically biased. Rather, they argue, English Only laws are designed to help minorities become assimilated faster into the mainstream than they might otherwise be by requiring that all interaction with the government be conducted in English.

Opponents of English as the Official Language laws state that such laws do not help immigrants but actually discriminate against immigrants. They state that immigrants already know that it is to their advantage to learn English and that such laws do nothing but make it more difficult for immigrants to get started here. They state that, "Public policies that put barriers between people lead to hostility,

(1986 & 1996), Hawaii (1978), Illinois (1969), Indiana (1984), Kentucky (1984), Louisiana (1811), Massachusetts (1975), Mississippi (1987), Missouri (1998), Montana (1995), Nebraska (1920), New Hampshire (1995), North Carolina (1987), North Dakota (1987), South Carolina (1987), South Dakota (1995), Tennessee (1984), Virginia (1981 & 1996), Wyoming (1996).

distrust, and isolation, reactions that will permeate our schools, businesses, and communities."⁸ They also argue that Utah's English as the Official Language Initiative, if passed, will be one of the most restrictive in the nation. As a result, it will surely be challenged in court, thus costing the state millions in legal fees.

There is some concern over the requirement in Section 5 mandating both the State Board of Education and the State Board of Regents to "make rules" that seem to promote the expansion of such programs English as a Second Language (ESL) and other school outreach programs for non-English speaking parents of school children. Will this requirement cost additional funds? If so where will the funds come from?

Proponents emphasize that Section 5 just makes clear that activities such as ESL and English outreach programs already in place should continue and are in no way prohibited by this initiative if passed by voters.

In Utah, an English as the Official Language bill was drafted in the 1997 legislative session but got nowhere. In 1998, sponsors of Official English laws gathered a sufficient number of signatures to place the proposal before the legislature. However, the legislature did not pass the initiative. As a result of these legislative defeats, sponsors of Official English went back to voters and obtained enough signatures to place it directly on the ballot.

Summary

Twenty-five states have Official English laws. However, in many states the Official English laws are very simple and impose no requirements on governments. Initiative A not only states that English is the official language of the state, it requires all government agencies to conduct all their business in English unless it deals with law enforcement, the judiciary, public safety, health, economic development and tourism, and foreign

⁸*Voter Information Pamphlet*, Lieutenant Governor's, Office State of Utah.

language education. If approved by voters, it would make Utah's English as the Official Language law one of the more specific in the nation. It will almost assuredly be challenged in court.

Initiative B - Utah Property Protection Act

Shall the law be amended to:

1. forbid forfeiture (seize and sale) of property involved in crime where an innocent owner neither knew of nor consented to the crime;
2. create uniform procedures to protect property owners where forfeiture is sought by the government;
3. require the government to prove property is subject to forfeiture, and to reimburse owners for damage to property in custody;
4. require distribution of forfeiture proceeds, after deductions for court costs and victim losses, to schools instead of counties or the state;
5. clarify valuation methods of forfeited property and require tracking and reporting of all money from its sale?

Short Description

Initiative B amends current forfeiture law by enacting provisions that apply to any and all circumstances dealing with property seizure that is subject to forfeiture. Seizure is the taking of property from the owner; forfeiture is the act of taking ownership of the property. The changes to existing law are as follows:

1. the new law requires that an agency which seizes property prepare a detailed inventory of the seized property, notify the prosecuting attorney of the items seized, the place of the seizure and any persons arrested at the time of the seizure, and give written notice to all owners;
2. requires that within 90 days of any seizure, the prosecuting attorney file a forfeiture complaint in district court and serve that complaint to all

owners;

3. requires that proceeds from the sale of forfeited property be deposited in the state's Uniform School Fund, but only after the deduction of the costs of storing the property, paying court appointed attorney's fees and compensating victims of the conduct that led to the forfeiture.
4. gives an owner of the seized property the right to:
 - a. void the seizure if the agency did not follow the notification requirements;
 - b. an immediate release of seized property in specified hardship situations;
 - c. a jury trial in civil proceedings;
 - d. a return of the property to the owners if the prosecuting attorney does not file for forfeiture in accordance with the law;
 - e. sue the agency that seized the property for damage or loss of the property due to negligence;
 - f. reasonable attorney's fees and costs of such a suit if the owner wins;

In the "Impartial Analysis" of this Initiative, in the *Voter Information Pamphlet*,⁹ the Office of Legislative Research and General Counsel writes that the following changes to existing law are made:

1. eliminating language providing for forfeiture proceeds to be distributed to; the Wildlife Resources Account; the state's General Fund; the Drug Forfeiture Account; the Financial Fraud and Money Laundering Forfeiture Account; the Department of Public Safety; an

⁹ Each general election year, the Office of Lieutenant Governor publishes a "Voter Information Pamphlet." This pamphlet provides information on the initiatives and propositions that will be placed on the general election ballot. This pamphlet discusses these initiatives and propositions by providing an impartial analysis and arguments from both proponents and opponents. The Office of Legislative Research and General Counsel prepares the impartial analysis section.

- agency requesting the funds for drug enforcement; and a local government that prosecuted a gambling violation.
2. eliminating a presumption that the owner of a vehicle involved in illegally fleeing police was the driver of the vehicle;
 3. making cars, boats, and planes used or intended for use to transport or facilitate the transportation, sale, receipt, simple possession, or concealment of illegal drugs no longer subject to forfeiture, unless used or intended for use to facilitate the distribution or possession with intent to distribute illegal drugs;
 4. expanding the exception to property subject to forfeiture for a racketeering violation so that property exchanged or to be exchanged for services given to defend the criminal charges or any related criminal charges is not subject to forfeiture;
 5. eliminating a presumption that money, coins, and currency are subject to forfeiture if found close to illegal drugs and drug paraphernalia subject to forfeiture; and
 6. narrowing the class of racketeering defendants subject to an alternative fine and reducing the maximum allowable amount of that fine.

Background

This initiative, if passed, would make many changes in how property forfeitures would be executed by law enforcement and the court proceedings necessary to finalize forfeiture. As a result, proponents and opponents are working very hard to see that the public understands their respective positions on this initiative.

Proponents

Supporters of the initiative state that current law permits property used in or associated with a crime to be seized and sold by government, even though the property owner or one of the property owners knew nothing about the crime nor approved of it. They argue that this is unfair and a

violation of our concept of private ownership of property. They argue that the proposed law is necessary to protect innocent property owners from forfeiture of their property. The initiative protects innocent owners by prohibiting forfeiture unless the government proves that the owner actually committed or consented to the crime.

Although under current law government must prove that property is subject to forfeiture, the new law makes those requirements more specific and therefore more burdensome. Furthermore, government would be required to compensate the property owner for any damage done to the property while in custody due to negligence. If the property owner cannot afford an attorney to help get the property returned, the government would be required to provide a court appointed attorney. The initiative would prevent law enforcement agencies from keeping the profits from the sale of seized property. Instead the profits would go first to cover administrative and court costs, second to victims of forfeiture-related crimes, and any remainder to the state's Uniform School Fund.

Opponents

Opponents of Initiative B argue that this initiative dramatically changes the way that law enforcement would be able to deal with the seizure of property used in or associated with a crime. They point out that asset forfeiture was developed to meet four major objectives:

1. keep criminal resources from being used for future criminal activities;
2. discourage criminal activity by removing its profit motive;
3. keep "dirty money" from corrupting legitimate businesses;
4. direct criminal profits into restitution to the community for its losses.

Opponents believe that Initiative B will:

1. create dozens of legal loopholes by which

- criminals will retain illegitimate assets;
2. ensure that criminal assets will compensate criminal defense attorneys instead of communities;
 3. increase the cost of law enforcement to taxpayers by facilitating endless legal maneuvering over asset recovery;
 4. increase the cost to taxpayers by ending a legitimate source of funding for anti-drug operations;
 5. could cost the state as much as \$10.6 million in federal grant money for law enforcement and other programs.

Opponents also believe that the new law provides no significant new protections to “innocent” property owners who are protected under existing forfeiture procedures.

Of serious concern to law enforcement agencies who are fighting the initiative is that the revenue from seizures will no longer go to the law enforcement agency involved. The Legislative Fiscal Analyst seems to support their concern. They estimate that current annual revenue from seizures going to state and local law enforcement agencies is approximately \$1.5 million. More important is that the money is used to leverage federal dollars. They state, “In order for certain state agencies and local governments to be eligible for certain federal funds, federal law requires forfeiture revenues to be used for wildlife management and law enforcement functions.”¹⁰ If Initiative B passes, this money would no longer be available for such purposes. The loss in federal funds is estimated to be \$10.6 million.

Another factor which upsets opponents of the initiative is that the initiative has largely been funded by out of state contributors. Almost all of the more than \$500,000 in campaign contributions in support of the initiative comes from three wealthy out-of-state contributors, all of whom, argue opponents, are supporting causes that challenge

existing federal and state drug laws.

Summary

Proponents believe this initiative makes substantial positive changes to current seizure and forfeiture laws. They argue that the initiative provides greater protection to property owners and places the burden of proof on law enforcement agencies in civil forfeiture cases. Proponents argue that these greater protections are needed to prevent law enforcement agencies from harming innocent property owners whose property may have been used in a crime. Opponents believe that the initiative provides too many loopholes which would allow criminals to retain their property, greatly increases the complexity and cost of forfeiture proceedings, and does not give greater protection to “innocent” property owners. They object to the out-of-state financing of the initiative.

A recent audit report prepared by the Office of the Legislative Auditor General¹¹ entitled *A Performance Audit of Asset Forfeiture Procedures* made the following conclusions:

1. There is little support for allegations that police are abusing their authority to seize and forfeit property.
2. Sufficient oversight is provided from law enforcement agencies, internal controls, county prosecutors and the courts to prevent abuse of individual’s rights.
3. Although allegations concerning police abuse of seized property are greatly overstated, some agencies need to improve the oversight of seized property.

REFERENDUMS

County Measure #2 Referendum on fluoridation of water in Salt Lake and Davis

¹⁰ *Voter Information Pamphlet*, Lieutenant Governor’s, Office State of Utah.

¹¹ *A Performance Audit of Asset Forfeiture Procedures*, Office of the Legislative Auditor General (November, 1999).

counties and Logan City.

Short Description

This November, voters of Salt Lake and Davis counties and the city of Logan will decide whether to fluoridate their public water systems. Four other small Cache County communities will cast nonbinding votes on this issue. Adding fluoride to drinking water has been occurring in the United States on an expanding level since 1945.

The purpose of putting fluoride in drinking water supplies is to reduce tooth decay on a mass scale in a cost-effective way. According to the Centers for Disease Control and Prevention¹² (CDC), a 1992 health survey showed that 62.2 percent of the nation's public water systems are fluoridated. These fluoridated systems provided water to 144.6 million people, or 56.6 percent of the U.S. population. Recently, Los Angeles, Phoenix, and Augusta and Portland Maine are going ahead with fluoridation. The CDC projects that by 2010, 75 percent of the U.S. population will be served by fluoridated water supplies.¹³

Though over half the nation currently has fluoridated water systems, Utah has very few. Only two municipalities, Brigham City and Helper, and Hill Air Force Base have fluoridated systems. Such a low level of fluoridated water ranked Utah 49th in the nation according to the 1992 CDC health survey. In 1976, Utah voters were given the opportunity to vote for statewide fluoridation and rejected it.

Background

Proponents

Extensive research and decades of experience with fluoridated systems has shown that fluoride

systems generally place fluoride in the water at a range of 0.7 to 1.2 parts per million. This range effectively reduces tooth decay without any significant side effects. According to the CDC approximately 62 percent of the nation's water supplies are currently fluoridated. The American Dental Association, the American Medical Association, the National Institute of Dental Research, the United States Environmental Protection Agency, the Center for Disease Control, the Food and Drug Administration, National Academy of Sciences, World Health Organization, the U.S. Public Health Service, the American Academy of Pediatrics, the American Academy of Family Physicians, the International Association of Dental Research and the American Cancer Society all support the fluoridation of water for better dental health.

Just recently U.S. Surgeon General Dr. David Satcher, wrote in the report, *Oral Health in America*, "Community water fluoridation is safe and effective in preventing dental caries in both children and adults. Water fluoridation benefits all residents served by community water supplies regardless of their social or economic status."

The American Dental Association makes this statement about fluoridation of water, "The American Dental Association has endorsed fluoridation of community water supplies as safe and effective for preventing tooth decay for more than 40 years . . ." ADA president Richard F. Fascola, DDS states, "Water fluoridation has been recognized by the Center for Disease Control and Prevention as one of the 10 great public health achievements of the 20th century. Fluoride's benefits are particularly important for those Americans, especially children, who lack adequate access to dental care. It is safe, effective and by far the best bang for the national, public health buck."¹⁴ The CDC made these remarks in an

¹² The Center for Disease Control and Prevention, U.S. Department of Health and Human Services.

¹³ "The Great Fluoride Debate," *Cleveland Plain Dealer*, (Sunday Supplement, March 26, 2000).

¹⁴ American Dental Association, "Statement on Water Fluoridation Efficacy and Safety," found on their Web site, www.ada.org

October 1999 report, “Fluoridation of community drinking water is a major factor responsible for the decline in dental caries (tooth decay) during the second half of the 20th century. Although other fluoride-containing products are available, water fluoridation remains the most equitable and cost-effective method of delivering fluoride to all members of most communities, regardless of age, educational attainment, or income level.”¹⁵

According to the ADA, “In 1993, the results of 113 studies in 23 countries were compiled and analyzed. (Fifty-nine out of the 113 studies analyzed were conducted in the United States). This review provided effectiveness data for 66 studies in primary teeth and for 86 studies in permanent teeth. Taken together, the most frequently reported decay reductions observed were: 40-49% for primary or baby teeth, and 50-59% for permanent teeth or adult teeth.” The ADA sights a second review of numerous studies between 1976 and 1987 concluding, “when data for different age groups were isolated, the decay reduction rates in fluoridated communities were: 30-60% in the primary dentition or baby teeth; 20-40% in the mixed dentition (ages 8 to 12); 15-35% in the permanent dentition or adult teeth (aged 14 to 17); and 15-35% in the permanent dentition (adults and seniors).”

Opponents

Opponents make four main arguments against water fluoridation. First, “any purported benefits of fluoridation are in scientific controversy.” The research is not as conclusive or as definitive as it sounds, according to their sources. Second, fluoride is considered an unapproved drug by the FDA. Dentists cannot provide fluoride without a prescription. Proper use of any drug requires an understanding of how much is too much. Since

fluoride is already in many foods and beverages, an estimated total intake of existing fluoride amounts is imperative. Opponents point to research which indicates fluoridation is unnecessary since people are already receiving 300% or more of the American Dental Association’s recommended daily amount.” Third, opponents point out that there are civil liberty and constitutional issues regarding the forced mass medication of the population which may be unnecessary because alternative means of reducing cavities are easily available.¹⁶

They point out that too much fluoride has led to a greater incidence of hip fractures, an increase in some cancers, kidney damage, skeletal fluorosis, accelerated aging process, genetic damage, and decrease in fertility. Opponents argue that the problem with fluoride is people getting too much. They point out that fluoride is found in many foods and drinks and, of course in many toothpastes. With fluoride available so easily, it is dangerous to put it in the water as well.

One of the most prevalent problems associated with consuming too much fluoride is fluorosis, a discoloring of the teeth. The incidence of dental fluorosis among U.S. children has increased from 10 percent to 22 percent in the past 25 years.¹⁷ Opponents state that fluoridated water simply provides too many people with too much fluoride, which in turn means more case of fluorosis.

Summary

Over half of the nation’s population is drinking from public water systems that are fluoridated. In ten years that percentage will increase to 75 percent. The vast majority of health organizations from the U.S. Surgeon General, to the U.S. Center for Disease Control, the American Dental

¹⁵ *MMWR*, Morbidity and Mortality Weekly Report, Center For Disease Control and Prevention, U.S. Department of Health and Human Services, (October 22, 1999, Vol. 48, No. 41.)

¹⁶ This is taken from the web site of the antifluoride organization called *No Fluoride 2000*. Their web site is www.nofluoride.com.

¹⁷ “The Great Fluoride Debate,” *Cleveland Plain Dealer*, (Sunday Supplement, March 26, 2000).

Association, American Medical association and many others endorse fluoridation of water systems.

Despite these endorsements, fluoridation has its critics. The biggest criticism is that there is some evidence that fluoridation may be linked to some health problems. The biggest problem appears to be fluorosis. This is caused by a person consuming too much fluoride. Other problems that have been linked to fluoride in some preliminary studies are weakened bones and some forms of cancer.

County Measure #2 - Sales Tax Increase and Mass Transit

Voters in Salt Lake, Davis and Weber counties will vote on a referendum that, if passed, would increase the current Utah Transit Authority sales tax of one-quarter cent per dollar to one-half cent per dollar. The additional estimated \$43 million in revenue would be used to implement a regional transportation improvement plan that expands Utah's TRAX system by adding spurs, expanding current bus service, and constructing commuter rail service between Ogden and Provo. Additional and improved bus service would improve within a year to a year and a half, the TRAX spurs would be built over the next two to five years and the commuter rail within the next five years.

Short Description

Since each county must pass the referendum in order to get improved mass transit service in that county, what projects or service expansion will be initiated next year will depend on which, if any, counties approve the tax increase. The possible scenarios¹⁸ are:

- a. *If no county approves the tax increase:*
The current system functions as is, with no improvements. That means no extension of TRAX to other Salt Lake County

municipalities, no increase in bus service and no development of commuter rail between Ogden and Salt Lake.

- b. *If all counties approve the tax increase:*
Mass transit along the Wasatch Front gets a big boost. Expanded bus service will begin with more frequent bus service including Sunday and holiday service in all three counties. Light rail spurs in Salt Lake County to the following places will probably be built -- West Valley City, West Jordan, Draper and Salt Lake International Airport. In addition, commuter rail service from Ogden to Salt Lake will be built.
- c. *If only Salt Lake County approves the tax:*
Light rail spurs in Salt Lake County to the following places will probably be built -- West Valley City, West Jordan, Draper and Salt Lake International Airport. Expanded bus service will begin with more frequent bus service including Sunday and holiday service in this county. No commuter line will be built.
- d. *If only Davis or Weber County approves the tax:*
Bus service would be expanded and improved in the county that approves the tax increase. However, if both of these counties approves the tax, in addition to improved bus service, the commuter line would be built to Salt Lake.

Background

Mass transit along the Wasatch Front has been a part of Utah's transportation system since the 1940s. Utah's current mass transit agency, the Utah Transit Authority, was incorporated in 1970 and today remains the agency that proposes and develops mass transit systems in Utah. In 1999, UTA bus ridership amounted to 23.5 million.

In December 1999, TRAX commenced and daily ridership on this light rail system averaged 20,000, about one-third more than was expected.

¹⁸ "Who Gets What With Transit Vote?" Salt Lake Tribune, September 18, 2000. Also an interview with Michael Allegra, Director of Transit Development, Utah Transit Authority, September 21, 2000.

With TRAX and bus ridership combined, mass transit ridership in 2000 is expected to be approximately 30 million. UTA estimates that with the busses and TRAX combined, their daily ridership is now at 100,000. By 2020, with the TRAX spurs built, ridership will reach 250,000. If these UTA projections are correct, then mass transit ridership would grow about twice as fast as the state's population. If that happens, per capita ridership would increase from about 17 to 27, a substantial increase. Increased use of mass transit is a national trend. Passenger traffic miles on intercity bus systems, for example, have increased from 23 million passenger miles to 30 million passenger miles between 1990 and 1997.

According to UTA, the exciting aspect of TRAX is that 50 percent of TRAX riders are new to mass transit. That is, they did not ride the busses prior to TRAX. Proponents believe that the popularity of TRAX proves that this form of mass transit can successfully become an even bigger part of the state's transportation system. They point out that the proposed areas to be served by TRAX spurs have some of the highest per capita ridership on the bus system already.

Proponents also believe that the success of TRAX indicates that a commuter rail line would also be successful. If this proposition is approved, a commuter line would be built from Weber County to Salt Lake County. Proponents believe an expanded TRAX system to West Valley City, West Jordan and Draper, a commuter line from Ogden to Salt Lake, along with the completion of the interstate renovation in Salt Lake Valley will provide a mixed transportation system that will be efficient and effective for decades to come. Even if individuals don't ride the bus and TRAX, according to proponents, they benefit because mass transit takes more than 81,000 cars off of the road every day and thereby reduces road congestion for all motorists. A one-quarter cent per dollar increase in the sales tax is a small price to pay for what taxpayers will get in return. Proponents remind us that with the funds from the

tax increase, UTA can obtain federal grants that will pay for most (as high as 80/20 match) of the construction costs.

Opponents make several arguments against the tax increase. First, they argue that mass transit systems are inefficient and expensive. Ridership on UTA busses and TRAX does not justify the costs of the system. Bus and TRAX tickets cover only a small portion of the cost, with the sales tax and federal grants covering the rest. If mass transit is such a good idea, why can't it pay for itself instead of being subsidized so heavily?

Opponents believe that per capita ridership has decreased for the past several years and is not likely to turn around because Americans are not going to give up their cars and therefore transportation policy should be built around that reality. They point out that vehicles per household in America have increased from 1.2 in 1969 to 1.7 in 1983 and to 1.8 in 1990. Furthermore, they argue that the percent of the public using mass transit has been declining for some time. In 1969, 8.4 percent of the Americans used mass transit to get to work, in 1983, it fell to 5.8 percent and in 1990, it dropped further to 5.5 percent.¹⁹

Second, opponents say that a much better alternative to mass transit, given these facts, is more and better roads, more park and ride lots, building of the legacy highway, greater promotion of ride-share and van-share programs, even subsidized taxi service.

Third, some opponents are opposed to the increase in the sales tax even though they may support the concept of mass transit expansion. This group points out that Utah's sales tax continues to increase in recent years as various special interests are able to get a small tax increase added to the sales tax and have it dedicated to their cause. Though each tax increase is small, they add up and place an increasing burden on the taxpayer. Such

¹⁹ *National Personal Transportation Survey, Summary of Travel Trends, 1969,1977,1983, and 1990, Federal Highway Administration.*

additions to the sales tax are a more serious problem now than before, according to this point of view, because of the greater ability of people to avoid paying the sales tax (tax avoidance) because of the growth of Internet and catalog sales transactions.

Summary

Support or opposition to this measure should depend substantially on whether one thinks this sales tax increase will improve the Wasatch Front's overall transportation system. Proponents argue that the expanded mass transit system that could be developed with the increased revenue from the tax will create an efficient mixed system of bus, light rail, commuter rail and automobile travel that will serve the state for years to come. Opponents argue that the money will develop a mass transit system that will be used by too few

people to justify the cost. They argue that the money for public transportation systems would be better spent to make our existing roads better and by building more roads.

A second issue concerning this referendum is the issue of using the sales tax to fund the mass transit system. Opponents argue continuously adding special dedicated tax increases to the state sales tax encourages people to avoid the tax. Avoidance, they point out, has become easier than ever with the Internet. Internet and catalog sales are increasing rapidly and the state currently has no effective way of taxing these sales. The voluntary use tax meant to tax these sales is not very effective. Proponents of mass transit accept that this avoidance problem exists, but feel that at the present time, this is the best funding option available to them. The small tax increase being proposed for mass transit will not, they believe, have a significant impact on the avoidance issue.