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Utah Legislative Update: 2018 - Part One

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Utah's Legislative session is underway. This annual event is a test of legislative speed and immune system stamina! It's a special political-Olympic event that takes place over seven weeks of intense debate and budget wrangling. Utah's session is often wrapping up when other states are just getting warmed up. The Holland & Hart Government Affairs team (Steve Young, Amanda Smith, and myself) are permanently stationed at the Utah Capitol, lobbying and tracking a variety of issues for clients this year. We offer these dispatches from the Hill on a few interesting policy areas, but feel free to reach out to one of us if there is a particular issue involving Utah's Legislature that you want to know more about.

Non-Compete Agreements: News Media Targeted

Two years ago, a non-compete bill was introduced into the 2016 legislative session that started a very robust dialogue about an issue that had previously been governed by case law. In the end, HB251's most impactful provision was its limitation of non-compete agreements in the State of Utah to one-year in duration. After the 2017 session, the issue was the subject of a study jointly funded by the Legislature and the Salt Lake Chamber. As the 2018 legislative session began, there were many rumors about the introduction of a new non-compete bill that might re-open the debate from 2016 on several contentious issues. However, when HB241 was introduced, its provisions were solely directed at the news media rather than any other sector of the economy. As currently drafted, a "news media" employer (newspaper, magazine, press association, new agency, wire service, radio station, television station, and television network) will be unable to enter into a non-compete agreement with an employee. If this bill passes, non-news media employers will not be impacted and can continue to use non-compete agreements of up to one-year in length.

Solid Waste Fees: Round 2

Given the topic, one should expect that a fight over solid waste fees might be a little messy. Last year, HB115 passed, and required the Utah Department of Environmental Quality (UDEQ) to conduct stakeholder meetings to craft a solid waste fee schedule that was "fair & equitable." After months of meetings, UDEQ proposed a fee schedule based on a flat fee per ton of waste. Many stakeholders believe this fee schedule fails the test of "fair & equitable" because it does not consider the size of facilities or the type of waste material being disposed. However, the UDEQ claimed the Bill prevented it from considering any other factors besides tonnage when setting the fee. This resulted in many stakeholders petitioning the Legislature to revisit the issue to address concerns related to a lack of cost accounting across the waste management division, a significant portion of fees that were being swept to the General Fund for non-waste uses, and to

“un-tie” the hands of the UDEQ to consider factors beyond tonnage in the fee schedule. Rep. Lee Perry (R-Perry) and Rep. Kay Christofferson (R-Lehi) have opened up companion bills to address these issues and initiate another take on solid waste fees.

State Revenue Forecasting: Federal Tax Reform Windfall

When the Federal tax reform package passed during the closing days of the 2017 Legislative Session, it created an interesting problem for Utah. It was assumed that Federal tax reform would generate a pass-through windfall for the State of Utah due to the broadening of the tax base, but as a state with an early, short, and fast session, uncertainty about the amount of a windfall could create an issue for Utah's budgeting cycle. Early estimates put the pass-through windfall at somewhere between \$25-\$80 million. Utah's budget must balance and close by March 8th, so ascertaining a firm dollar amount that could be used for state-level tax reform was a top priority. The Utah State Tax Commission, Legislative Fiscal Analyst, and the Governor's Office of Management & Budget met extensively with their spreadsheets to run scenarios of Utah data and consider the impacts of the new IRS regulations and the new tax laws. The final analysis is that Federal tax reform will result in an \$80 million boost in tax revenue from income tax. This has Utah legislators considering state-level tax reforms targeted at reducing the personal income tax rate (currently at 5%) and adopting business income tax apportionment formulas that would move Utah fully to a single-sales factor system.

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