

**MINUTES OF THE  
UTAH CONSTITUTIONAL REVISION COMMISSION**  
Friday, February 3, 2006 – 12:00 p.m. – Room W125 House Building

**Members Present:**

Judge Jon M. Memmott, Vice Chair  
Rep. Sheryl L. Allen  
Chief Justice Christine Durham  
Mr. Roger Tew  
Mr. Robin Riggs  
Mr. Morris D. Linton  
Mr. Michael Petersen  
Ms. Kristine Strachan  
President John L. Valentine

**Members Absent:**

Mr. Kevin J. Worthen,  
Chair Mr. Byron L. Harward  
Rep. Ralph Becker  
Sen. Mike Dmitrich  
Mr. Michael Christensen  
Sen. Peter C. Knudson  
Rep. LaVar Christensen

**Staff Present:**

Mr. Robert H. Rees, Associate General Counsel  
Ms. Brooke Ollerton, Legislative Secretary

**Note:** A list of others present, copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Commission Business**

Vice Chair Memmott called the meeting to order at 12:15 p.m. Rep. Becker, Chair Worthen, and Mr. Harward were excused from the meeting.

**2. Review of Constitutional Amendments Proposed for Consideration During the 2006  
General Session of the Utah Legislature**

Rep. John Dougall introduced H.J.R. 1 1st Sub., "Resolution Regarding Property Tax on Personal Property." He explained that the resolution would authorize the Legislature to provide tax exemptions for certain property items of minimal value.

Ms. Candace Daly, National Federation of Independent Business, spoke in favor of the legislation.

The Commission asked Rep. Dougall questions about changes regarding "*de minimus*" values and other language in the bill.

Mr. Lee Gardner, Salt Lake County Assessor, expressed concerns over language and the dollar amount of "minimum value." He outlined what he saw as some of the potential effects of changes in the legislation and stated his opposition to those changes.

Ms. Strachan asked about exemptions in already-existing constitutional language and asked about the reasons for moving some but not all of the permissive exemptions to the subsection that has required exemptions. She raised concern about taking this exemption flexibility out of the hands of the Legislature and the "piecemeal" nature of that part of the proposal.

President Valentine asked if language on lines 81-86 was a replacement of 88-91, 96-97.

Rep. Dougall explained that Article XIII, Section 3, Subsection (1) of the Utah Constitution requires certain property tax exemptions, whereas Subsection (2), authorizes the Legislature to provide the exemptions at its discretion. The items in lines 81-86 would become constitutionally required exemptions.

Mr. Riggs said that the Salt Lake Chamber of Commerce supports the legislation. He pointed out that per-item exemptions were already allowed in the Utah Constitution.

Mr. Tew stated that the size of a fiscal note on a bill with per-item "*de minimus*" exemptions would be unlikely to pass.

Vice Chair Memmott expressed concern about inserting "primarily" into the household furnishings exemption language of the Constitution because it would shift the burden of interpretation from the Legislature to the courts.

Chief Justice Durham explained that in a court case during the 1980s the court decided that the term "exclusively" was to be strictly interpreted. She asked Rep. Dougall to make it clear that the use of "exclusively" includes the "*de minimus*" practices that already exist if he decides to put it back in the bill.

President Valentine said the change from "exclusively" to "primarily" complicates the bill because it opens up the door to litigation. He suggested leaving "exclusively" in, but in the process of adoption it ought to be made clear that it is not intended to change the "*de minimus*" use of primary property for business or other purposes.

The Commission also discussed the loss of legislative discretion when the now permissive exemptions are shifted from Subsection (2) to (1).

**MOTION:** Mr. Riggs moved to recommend H.J.R. 1 1st Sub. with the following changes: delete lines 85-86 and restore lines 96-97.

**SUBSTITUTE MOTION:** Mr. Tew moved to recommend H.J.R. 1 1st Sub. with the following changes: delete lines 81-86, restore lines 88-91 and 96-97, and leave lines 98-103. The motion passed unanimously with President Valentine absent for the vote.

Rep. Mark Wheatley introduced H.J.R. 5, "Resolution Providing Property Tax Exemption for Veterans." He also distributed "H.J.R. 5 - House Committee Amendment - February 2, 2006, 4:35 p.m." and companion bill H.B. 359, "Property Tax Exemption for Veterans."

Mr. Linton asked about the type of property exempted in H.B. 359 and the fiscal impact of those exemptions.

Rep. Wheatley said he had not received the fiscal note. The exemption was explained on lines 130-142.

Mr. Mike Jerman, Utah Taxpayers Association, said that any abatement should be targeted to only those veterans who struggle to pay property tax.

Mr. Gardner said that many veterans like himself can afford to pay property taxes. He felt that the exemption should only be extended to those who can least afford to pay.

Chief Justice Durham pointed out that the veterans exemption currently in the Constitution is based on service not need, so this proposed resolution would not be similar in that respect.

Rep. Wheatley explained that his motives for the legislation were to show appreciation for veterans' sacrifices.

**MOTION:** Chief Justice Durham moved not to approve H.J.R. 5. The motion passed with Ms. Strachan opposed and President Valentine absent for the vote.

**MOTION:** Chief Justice Durham moved to approve of the minutes of the November 10, 2005 meeting. The motion passed unanimously with President Valentine absent for the vote.

Rep. Hogue introduced H.J.R. 6, "Resolution Limiting Property Tax on Primary Residence." He explained that the bill would place a ceiling on property taxes for individuals on lower or moderate incomes and allow the Legislature to define and implement the provisions in statute. He suggested that the language about the retired and elderly could be deleted.

Chief Justice Durham asked why language was used to give Legislature the freedom to define and implement the provisions (Article XIII, Section 2(7)(a)), but once those definitions are met, a person may not be required to pay more property tax. She asked Rep. Hogue why the bill didn't give legislature the affirmative power to freeze tax for persons in certain categories.

Rep. Hogue responded that his bill gives the Legislature latitude in different circumstances and gives them the ability to deal with the issue in statute.

Mr. Tew expressed his opposition to this legislation because it reminded him of Proposition 13 in California. He believed it would destroy important underpinnings of property tax in Utah.

Rep. Allen agreed and said a circuit breaker would be a better solution.

Mr. Chris Poulsen, Utah County Assessor, reminded the Commission that a mechanism for abatement already exists and recommended that the Commission seriously consider the ramifications of freezing values because similar measures have failed in other states.

Mr. Jerman, explained the current 45% exemption for homeowners and said that the system works well.

Mr. Gardner expressed concern over treating people apparently equally, but not in fact.

Rep. Hogue pointed out that the circuit breaker is provided for in the Constitution under Article XIII, Section 3. He said it was important to have something in the Constitution that allows the Legislature to help this group of people through statute.

Mr. Tew expressed concern about and opposition to the resolution because it violates the position the Commission has always taken of supporting the concept of taxation at fair market value with the exception of the specific exemptions enumerated.

Chief Justice Durham asked Rep. Hogue why the freeze is phrased as a mandate if what he was trying to do is to help low income individuals. She suggested that if he only wanted to give the Legislature power to provide those breaks, the part of the Constitution that should be amended was the constitutional provision that already gives exemptions to the poor. She said that this proposal was problematic.

Due to a lack of a quorum, no action was taken on H.J.R. 6.

Vice Chair Memmott explained that Rep. Hughes had indicated that he was no longer pursuing H.J.R. 17, "Resolution Regarding Judicial Power," this session so the Commission would not consider it in this meeting.

Rep. Allen informed the Commission of the Revenue and Taxation Committee's discussion of unintended consequences in lines 32-34 in H.J.R. 17.

Vice Chair Memmott asked the Commission to make a record of its comments on H.J.R. 29, "Resolution Restricting Use of Eminent Domain," since there was no quorum.

Mr. Tew expressed apprehension over H.J.R. 29.

Chief Justice Durham said the resolution was extremely harsh because it would preclude state and local governments' condemnation activities for public safety threats. She expressed the need for the League of Cities and Towns, the county associations, and other groups to be involved in the debate.

The Commission agreed that the issues raised in H.J.R. 29 are of such serious consequence that the resolution needed to be studied at length by the Commission or another committee before passage.

Mr. Rees outlined the key provisions of S.B. 189, "Constitutional Revision Commission Amendments." He explained that it makes changes to commission membership, the method for filling vacancies, and redefines who can request the CRC to advise on proposed constitutional amendments or revisions.

Ms. Strachan asked if S.B. 189 addressed her feeling that the Commission is limited to either approving or disapproving of legislation brought before them.

Mr. Rees opined that Commission's statutory role is to "advise" and it has the flexibility under the current language to advise as it likes.

Mr. Peterson raised a concern about lines 76-77, which determine that the nine legislative and governor-appointed members will select six additional citizen members of the Commission. He suggested allowing all current members to fill a vacancy in one of the nonlegislative and nongubernatorial appointed seats rather than just the nine legislative and gubernatorial appointees filling the vacancy.

Vice Chair Memmott agreed and Mr. Rees said he would recommend the suggestion to the sponsor.

**3. Other Items / Adjourn**

Vice Chair Memmott adjourned the meeting at 1:52 p.m.