

**MINUTES OF THE  
JUDICIARY INTERIM COMMITTEE**

Wednesday, August 20, 2008 – 9:00 a.m. – Room C450 State Capitol

**Members Present:**

Sen. Gregory S. Bell, Senate Chair  
Rep. Eric K. Hutchings, House Chair  
Sen. Lyle W. Hillyard  
Sen. Peter C. Knudson  
Sen. Ross I. Romero  
Rep. Sheryl L. Allen  
Rep. Jim Bird  
Rep. Jackie Biskupski  
Rep. Lorie D. Fowlke  
Rep. Kevin S. Garn  
Rep. Keith Grover  
Rep. Neil A. Hansen  
Rep. Gregory H. Hughes  
Rep. Christine A. Johnson  
Rep. Kay L. McIff  
Rep. R. Curt Webb  
Rep. Mark A. Wheatley

**Staff Present:**

Jerry D. Howe, Policy Analyst  
Esther D. Chelsea-McCarty, Associate General Counsel  
Amanda K. Majers, Legislative Secretary

**Note:** A list of others present, a 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. Committee Business**

Chair Hutchings called the meeting to order at 9:05 a.m.

**MOTION:** Sen. Knudson moved to approve the minutes of the May 21, 2008 meeting. The motion passed unanimously, with Sen. Hillyard, Rep. Garn, Rep. Hughes, and Rep. McIff absent for the vote.

**2. Condominium and Community Association**

Rep. Webb distributed and discussed, "Condo Association-HOA Lien Foreclosure: Three Issues to Address." He also discussed 2009 General Session draft legislation, "Condominium and Community Association Provisions," which was distributed to the Committee prior to the meeting. Rep. Webb stated that under the current statute it is structurally impossible to foreclose homeowners association (HOA) liens as trust deeds because of a lack of compliance with the trust deed statute. He asserted that the current trust deed statute must be changed to either incorporate the structural elements required for HOAs to foreclose as trust deeds or to eliminate trust deed foreclosure as an alternative for HOAs. Rep. Webb advocated for the latter option stating that if HOAs were granted trust deed foreclosure privileges they would then have powers inconsistent with liens of similar or greater value. Rep. Webb also spoke against an alternative to the draft legislation, "Condominium and Community Association Provisions - Amendments," which was distributed to the Committee prior to the meeting.

Mr. Bruce Maak, resident of Heber City, spoke in favor of the draft legislation. He presented the history of trust deeds in Utah, and stated that something must be done to remedy the absence of a link in the chain of title because HOAs are foreclosing liens under a defective statute that creates title problems.

Mr. Glen Roberts, President of Utah Land Title Association, spoke in favor of the draft legislation. He argued that the absence of a link in the chain of title causes the title to be uninsurable.

Rep. Winn, Mr. Maak, and Mr. Roberts answered questions from the committee concerning the draft legislation.

Mr. John Morris, Community Associations Institute, Utah Legislative Action Committee, distributed and discussed, "Utah Legislative Action Committee: Materials Presented to Utah Legislators August 21, 2008, In Support of Permitting Community Associations to Continue to Utilize Non-judicial Foreclosures." Mr. Morris spoke in opposition to the draft legislation saying it is a solution without a problem, and stated that non-judicial foreclosure is a useful tool for homeowners associations.

Mr. Morris answered questions from the Committee about the merits of non-judicial foreclosure.

**MOTION:** Rep. Johnson moved that the committee end discussion of this issue at 10:45 a.m. The motion passed with Sen. Bell and Rep. Hutchings voting in opposition. Sen. Hillyard, Sen. Knudson, Rep. Bird, Rep. Hansen, and Rep. Wheatley were absent for the vote.

Mr. Steve Peterson, Ballard, Spahr, Andrews, and Ingersoll, representing American Resort Development Association, spoke in opposition to the draft legislation stating that time-shares should be treated differently due to the nature of that industry. He stated that the draft legislation is flawed in policy concerning the Assessment Area Act and needs to be studied further.

Mr. Rolf Berger spoke in favor of the language proposed by "Condominium and Community Association Provisions - Amendments."

Sen. Bell contended that the draft legislation needs further work to address the time-share issue.

Rep. McIff stated that the Committee needs to consider municipality assessments to make sure the draft legislation does not create a problem in that area.

Rep. Garn spoke in support of the draft legislation but added that it needs further Committee collaboration.

Rep. Hughes stated that committee bills carry a lot of weight during the general session, and argued that the proposed amendments need further exploration.

**MOTION:** Rep. Webb moved to adopt 2009 General Session draft legislation, "Condominium and Community Association Provisions" as a committee bill. The motion passed with Sen. Bell, Sen. Romero, Rep. Fowlke, Rep. Hansen, and Rep. Johnson voting in opposition. Rep. Biskupski and Rep. Wheatley were absent for the vote.

### **3. New Federal Regulation Requiring Cash Medical Support**

Mr. Mark Brasher, Director, Office of Recovery Services, distributed and discussed "Child Support Enforcement Program: Medical Support - Final Regulation Issued July 21, 2008 - Cash Medical Support Provisions."

Mr. Brasher answered questions from the Committee.

#### **4. Material Harmful to Minors Amendments**

Rep. Allen discussed 2009 General Session draft legislation, "Material Harmful to Minors Amendments," which modifies the Criminal Code regarding the offenses of distribution of pornographic material by a minor to a minor and other material harmful to minors.

Mr. Troy Rawlings, Davis County prosecutor, spoke in favor of the draft legislation. He stated that the draft legislation does not make changes to the sexual exploitation of a minor statute, but proposes to amend current penalties for minors who distribute pornographic material or deal in material harmful to a minor to a Class A misdemeanor for persons 16 or 17 years of age and a Class B misdemeanor for persons younger than 16 years of age. Mr. Rawlings argued that these amendments are needed to encourage the reporting of these acts, and to create options for prosecuting these types of cases where minors are consensually exchanging explicit photographs.

Sen. Romero inquired if prosecutors are allowed discretion as to whether these minors have to be prosecuted or whether they can be dealt with in the home.

Mr. Rawlings stated that the draft legislation actually allows discretion because it allows prosecutors to charge these minors with misdemeanors, where as under the current statute if these types of crimes are reported prosecutors only have two choices: to charge the minor with a felony or to allow the minor to walk away without any consequence.

Rep. Hutchings inquired whether a parent who does not report the exchange of photographs between that parent's child and another child could then be charged with withholding information of a crime.

Mr. Rawlings answered that it may be possible for a parent to be charged depending on the circumstances because physical abuse, sexual abuse, or sexual exploitation of a child are required to be reported; however, dealing in material harmful to a minor is not required to be reported under the mandatory reporting statute.

Mr. Paul Boyden, Executive Director, Statewide Association of Prosecutors, spoke in favor of the draft legislation and described the provisions of the legislation.

Sen. Knudson questioned how pervasive the problem is statewide from a prosecutorial standpoint.

Mr. Boyden stated that there are reported cases in Salt Lake and Davis County, but because it is a technology related crime there are no boundaries. He added that no formal study has been conducted, but the problem is pervasive.

Rep. McIff stated concern that by codifying these acts it may increase the level of formal responses and the number of cases filed thereby creating an even greater problem. He also stated concern with the lack of relief under the draft legislation for the situation of an 18 year old and a 17 year old engaging in these acts, and inquired if the 18 year old would then go onto the sex offender registry.

Mr. Rawlings stated that an 18 year old would not be placed on the sex offender registry for dealing in material harmful to a minor under the current statute.

Rep. Hutchings reasoned that the draft legislation is creating a new law to address a new issue, and that it is important to note that the exchange of an explicit photograph between two consenting people would now be a crime. He also stated that the draft legislation changes the definition of distribution of pornography from "others" to "another," so that distribution of pornography could be classified as a photograph being exchanged with one other consensual person, which has become a common practice among consensual relationships.

Rep. Allen stated her willingness to check into Sen. Romero's and Rep. Hutchings's concern about the ramifications of reporting these types of crimes. She maintained that prosecutors are in support of this legislation and encouraged the Committee to give prosecutors the ability to use discretion in prosecuting these cases.

#### **5. Youth Services / Juvenile Receiving Day Center for Tooele County**

Rep. Ronda Rudd Menlove distributed and discussed, "Growth Issues and Expansion of Services in Tooele County: The Need for a Juvenile Receiving Center in Tooele County." Rep. Menlove informed the Committee that Tooele County is currently experiencing a rapid population growth that necessitates an increase in public services, specifically apparent is the need for youth services. The nearest services are approximately forty miles away, which is difficult for parents and law enforcement when transporting problematic youth.

Ms. Colleen Johnson, Tooele County Commissioner, stated that the growth Tooele County has experienced has become a burden, especially concerning youth services. She informed the Committee that Tooele County has no effective, immediate sanctions for youth. Ms. Johnson mentioned the community efforts already made toward establishing the juvenile receiving center and asked for the Committee's support in achieving their goal.

Mr. Ronald D. Kirby, Tooele City Chief of Police, asserted that without a juvenile receiving center Tooele has no way to deal with juveniles needing to be detained, because law enforcement does not have the necessary personnel to transport them to the Salt Lake juvenile receiving center.

Rep. Menlove answered questions from the Committee and discussed the procedures required to obtain adequate appropriations to fund the Tooele County juvenile receiving center.

Ms. Aurora Reyes, resident of Tooele, testified, from her personal experience, to the need for a juvenile receiving center in Tooele County.

#### **6. Other Items / Adjourn**

**MOTION:** Rep. Bird moved to adjourn the meeting. The motion passed unanimously, with Sen. Hillyard, Rep. Garn, and Rep. Hughes absent for the vote.

Chair Hutchings adjourned the meeting at 12:13 p.m.