

# Political Subdivisions Interim Committee

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Wednesday, November 19, 2008  
2:00 p.m.  
Room W20 • House Building

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## **ENCLOSURES**

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### **Follow-up Legislation on Reporting Local Government Boundary Actions**

(Agenda Item #2)

Draft legislation for 2009 General Session ..... *(being drafted)*

### **Follow-up Legislation on Local Health Department Funding** (Agenda Item #3)

Draft legislation for 2009 General Session ..... *(to be specified and drafted)*

### **Improvement District for Electrical Service** (Agenda Item #4)

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### **Abandonment of Property Taken Under the Threat of Eminent Domain**

(Agenda Item #6)

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*For further information, please contact Joseph Wade at 538-1032*  
Prepared by the Office of Legislative Research and General Counsel

## **2008 MEETING DATES**

### **Political Subdivisions Interim Committee**

<b><u>Date</u></b>	<b><u>Time</u></b>	<b><u>Place</u></b>
Wednesday, April 16	2:00 p.m. - 5:00 p.m.	Room W020, West Office Bldg
Wednesday, May 21	2:00 p.m. - 5:00 p.m.	Room W020, West Office Bldg
Wednesday, June 18	2:00 p.m. - 5:00 p.m.	Room W020, West Office Bldg
No meeting in July		
Wednesday, August 20	3:00 p.m. - 5:30 p.m.	State Office Building Auditorium
Wednesday, September 17	2:00 p.m. - 5:00 p.m.	Room W020, West Office Bldg
Wednesday, October 15	2:00 p.m. - 5:00 p.m.	Room W020, West Office Bldg
Wednesday, November 19	2:00 p.m. - 5:00 p.m.	Room W020, West Office Bldg
No meeting in December. Time reserved for general session preparations.		



Michael E. Christensen  
Director

John L. Fellows  
General Counsel

## NOTICE OF MEETING

### Political Subdivisions Interim Committee

The committee chairs have scheduled the following meeting:

DATE: **Wednesday, November 19, 2008**  
TIME: **2:00 p.m.**  
PLACE: **Room W020, House Building**

If committee members would like to be excused from the meeting, they may call Joseph Wade or Wendy Bangerter at 538-1032.

#### COMMITTEE MEMBERS

Sen. Dennis E. Stowell, Senate Chair  
Rep. Fred R Hunsaker, House Chair

Sen. Fred J. Fife	Rep. Richard A. Greenwood
Sen. Sheldon L. Killpack	Rep. Christopher N. Herrod
Sen. Michael G. Waddoups	Rep. Christine A. Johnson
Rep. Sheryl L. Allen	Rep. Brad King
Rep. Tim M. Cosgrove	Rep. Jennifer M. Seelig
Rep. Bradley M. Daw	Rep. R. Curt Webb
Rep. Gage Froerer	Rep. Carl Wimmer
Rep. Kerry W. Gibson	

#### STAFF

Mr. Joseph Wade, Policy Analyst  
Mr. Robert H. Rees, Associate General Counsel  
Ms. Wendy L. Bangerter, Legislative Secretary

Utah State Capitol Complex  
House Building, Suite W210  
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In compliance with the Americans with Disabilities Act, persons needing auxiliary communicative aids and services for these meetings should call Nancy McPherson at 801-538-1032 or TTY 326-1634, giving her at least three working days notice.

**POLITICAL SUBDIVISIONS INTERIM COMMITTEE  
2008 MEMBERSHIP LIST**

Dennis E. Stowell (Senate Chair)	PO Box 796 Parowan, UT 84761	(H) 435 477-8143 (C) 435 559-8143 (F) 435 477-8111	dstowell@utahsenate.org
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Rep. Richard A. Greenwood	3704 W 6050 S Roy, UT	(O) 801 940-7236 (C) 801 940-7236 (H) 801 985-3280	fxdwg_98@hotmail.com
Rep. Christopher N. Herrod	4125 Crestview Ave. Provo, UT 84604	(H) 801 375-9624	cherrod@utah.gov
Rep. Christine A. Johnson	1336 E 900 S Salt Lake City, UT 84105-1618	(C) 801 661-3489	christinejohnson@utah.gov
Rep. Brad King	635 N 500 E Price, UT 84501	(H) 435 637-7955 (O) 435 613-5246	(F) 435 637-2433 brad.king@ceu.edu skhking@emerytelcom.net
Rep. Jennifer M. Seelig	986 W Sterling Dr. Salt Lake City, UT 84116	(H) 801 519-2544 (O) 801 924-9892	jseelig@utah.gov
Rep. R. Curt Webb	500 Hillsbrough Dr. Providence, UT 84332	(O) 435 753-2467 (H) 435 753-0215	(C) 435 770-9797 curt@cachetitle.com
Rep. Carl Wimmer	5526 W 13400 S #217 Herriman, UT 84096	(C) 801 608-4763	cwimmer@utah.gov

**COMMITTEE STAFF**

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Committee Staff Attorney  
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# AGENDA

## POLITICAL SUBDIVISIONS INTERIM COMMITTEE

UTAH LEGISLATURE

Approximate  
Time Frame

Wednesday, November 19, 2008 • 2:00 p.m. • Room W020 House Building

- 2:00**    **1. Committee Business**
- Call to order - Representative Hunsaker, House Chair
  - Approval of the minutes of the October 15, 2008 meeting
- (20 min)**    **2. Follow-up Legislation on Reporting Local Government Boundary Actions**  
*In the October meeting the Committee discussed this issue. Draft legislation will be presented for the Committee's consideration.*
- Explanation of legislation: Robert H. Rees, Associate General Counsel
  - Public comment
  - Committee discussion
- (20 min)**    **3. Follow-up Legislation on Local Health Department Funding**  
*In the May, August, and October meetings the Committee discussed this issue. Draft legislation will be presented for the Committee's consideration.*
- Local Health Departments
  - Utah Department of Health
  - Utah Department of Environmental Quality
  - Utah Association of Counties
  - Public comment
  - Committee discussion
- (20 min)**    **4. Improvement District for Electrical Service**  
*This issue was introduced in the April committee meeting and relates to providing electrical service to Ticaboo in Garfield County. Concepts of proposed legislation will be presented for the Committee's consideration.*
- Craig Smith, attorney with Smith & Hartvigsen, PLLC
  - Public comment
  - Committee discussion
- (20 min)**    **5. Ground Water Management District**  
*This issue was introduced in the April committee meeting. The discussion is trying to solve a problem of over allocation of ground water in the Enterprise/Beryl area of Utah. Concepts of proposed legislation will be presented for the Committee's consideration.*
- Dallin Jensen, attorney with Parsons Behle and Latimer
  - Public comment
  - Committee discussion

- (20 min) 6. Abandonment of Property Taken Under the Threat of Eminent Domain**  
*The problem will be explained and discussed. Concepts of proposed legislation will be presented for the Committee's consideration.*
- Affected landowner - Robert Schow
  - Public comment
  - Committee discussion
- (30 min) 7. Report from Affordable Housing Ad Hoc Task Force**  
*In the June meeting the Committee discussed issues related to affordable housing. At the conclusion of the meeting, the Utah League of Cities and Towns volunteered to organize an ad hoc task force to bring interested parties together to discuss affordable housing issues. The task force also discussed other land use issues. Concepts of proposed legislation will be presented for the Committee's consideration.*
- Jodi Hoffman, Utah League of Cities and Towns
  - Mike Ostermiller, Utah Property Rights Coalition
  - Public comment
  - Committee discussion
- 5:00 8. Other Items / Adjourn**

**MINUTES OF THE  
POLITICAL SUBDIVISIONS INTERIM COMMITTEE**  
Wednesday, October 15, 2008 • 2:00 p.m. • W020 House Building

**Members Present:**

Sen. Dennis E. Stowell, Senate Chair  
Rep. Fred R Hunsaker, House Chair  
Sen. Fred J. Fife  
Sen. Michael G. Waddoups  
Rep. Sheryl L. Allen  
Rep. Tim M. Cosgrove  
Rep. Gage Froerer  
Rep. Richard A. Greenwood  
Rep. Christopher N. Herrod  
Rep. Christine A. Johnson  
Rep. Jennifer M. Seelig  
Rep. R. Curt Webb  
Rep. Carl Wimmer

**Members Absent:**

Sen. Sheldon Killpack  
Rep. Bradley M. Daw  
Rep. Kerry W. Gibson  
Rep. Brad King

**Staff Present:**

Mr. Joseph Wade, Policy Analyst  
Mr. Robert H. Rees, Associate General Counsel  
Ms. Wendy L. Bangerter, 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 Stowell called the meeting to order at 2:30 p.m.

**MOTION:** Rep. Allen moved to approve the minutes of the September 17, 2008 meeting. The motion passed unanimously. Sen. Waddoups, Rep. Johnson, Rep. Webb, and Rep. Wimmer were absent for the vote.

**2. Quality Growth Commission Report**

Mr. Jaren Davis, Chair, Quality Growth Commission, introduced himself and Mr. John Bennett, Executive Director, Quality Growth Commission.

Mr. Bennett distributed "Quality Growth Commission - 2008 Report" and gave a slide presentation reporting on the state of quality growth in Utah. He reviewed the local government planning issues of concern according to an informal survey covering several jurisdictions. He explained "Super Tool," which is a website to bring together local resources and tools to help in all types of planning.

**3. Reporting Local Government Boundary Changes**

Rep. Kory Holdaway explained the legislative history of this topic. He introduced 2009 General Session draft legislation, "Local Government Entity Changes."

Mr. Wade gave a slide presentation that reviewed the scope of the draft legislation and the different ways a boundary might be changed. He referred to current and proposed "Flow of Information for Reporting Government Boundary Changes," previously distributed in the committee packet to illustrate his explanation of the proposals in the draft legislation.

Mr. Rees explained changes that have taken place over the years to identify entities of the state. He explained how this proposed legislation modifies provisions relating to the process of certifying local government actions affecting the name or boundary of a local entity.

Mr. Arie VanDeGraaff, Utah Association of Counties, spoke in favor of the proposed legislation.

Mr. Richard Maughn, President, Utah Association of County Recorders, and Davis County Recorder, expressed the concerns of the association.

The Committee discussed the recording/certifying process.

Mr. James Kaiserman, President, Utah Association of County Surveyors, and Wasatch County Surveyor, also spoke in favor of the proposal.

Mr. Allan Spriggs, Summit County Recorder, listed the parts of the draft legislation the county recorders agree with and how it will help simplify the process for them. He asked for some technical amendments.

A final bill will be presented to the Committee at the November 19, 2008 meeting.

#### **4. Followup Legislation on Local Health Department Funding**

During the August meeting, the Committee requested information regarding state and federal mandates and associated costs. In response to the request, "Local Health Department Duties" was distributed to the Committee.

2009 General Session draft legislation, "State and Local Health Authorities - Distribution of Federal Monies" was distributed and discussed.

Mr. Lloyd Berentzen, Director, Bear River Health Department, commented on the legislation.

Dr. Richard Melton, Deputy Director, Utah Department Health (UDH), expressed the UDH's agreement with the intent of the bill. However, he spoke in opposition to it and explained UDH's concerns. He suggested that the local health departments be required to work together and develop a rule, which would be easier to change than statute as the process continues to develop.

Mr. Bill Sinclair, Deputy Director, Department of Environmental Quality, agreed that a statutory fix may not be necessary and believes the proposed legislation deserves further discussion.

Chair Stowell introduced 2009 General Session draft legislation, "Local Public Health Funding," which would require UDH to establish a local health emergency assistance program.

Mr. Berentzen, Mr. VanDeGraaff, Ms. Kathy Froerer, Utah Association of Local Health Departments, and Mr. Gary Edwards, Salt Lake Valley Health, participated in the discussion with the Committee.

## **5. Creation of an Assessment Area**

Sen. Mark Madsen discussed the current statutory process for designating an assessment area. He described the assessment area that brought about the concerns with the current process. He made recommendations for statutory changes to the process for designating an assessment area and changes to when a local entity is allowed to assess property owners.

Mr. Scott and Ms. Lynn Jennings, property owners impacted by the recent designation, explained how the increased tax impacted them personally. They also made recommendations for statutory changes.

Committee members discussed the issue.

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

**MOTION:** Rep. Webb moved to adjourn the meeting. The motion passed unanimously. Rep. Cosgrove, Rep. Froerer, Rep. Gibson, Rep. Greenwood, Rep. Herrod, and Rep. Johnson were absent for the vote.

Chair Stowell adjourned the meeting at 5:05 p.m.





September 25, 2008

Mr. Justin Fischer  
Garfield County Courthouse  
55 South Main - Box 77  
Panguitch, UT 84759

RE: Ticaboo Electrical Service Request for Proposals

Dear Justin:

Thank you for the opportunity to respond to the Ticaboo Request For Proposals (RFP) for central station electrical service to replace the current diesel generation. Garkane Energy Cooperative, Inc. will not, however, be making a formal proposal as per the documents we received from Smith-Hartvigsen dated August 4, 2008.

Throughout the years Garkane has provided cost estimates to provide electric service to the Ticaboo area as the demand for uranium rose and fell. However, the projected loads used in prior estimates were much less than those proposed today. To construct facilities to serve a proposed 30 MW load with today's market prices for power becomes a very expensive proposition for any utility, particularly a small company like Garkane. Our existing customers could not absorb the cost of these facilities, thus any expenses would have to be paid by those requesting the power; i.e., the uranium companies, mining companies, developers, etc. Moreover, given the current state of politics in the nation, a presidential election looming and no clear national energy policy for nuclear development, any provider of electrical service would require substantial financial guarantees from the requestors of the power line.

We also note the Ticaboo area is not within Garkane's current certificated service territory granted by the Utah Public Service Commission, nor is it within Rocky Mountain Power's certificated area. Throughout Utah it has generally been assumed if an area is not currently served by a cooperative or a municipality, by default Rocky Mountain Power retains the service territory and the obligation to serve.

Furthermore, in our opinion the time frames in the RFP are not realistic, especially with regards to acquisition of rights-of-way. We have a working relationship with all the federal and state agencies with stewardship responsibilities over the public lands in this area. The tremendous environmental issues alone make this a difficult project for any utility, in addition to

Mr. Justin Fischer, cont.  
September 25, 2008  
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the remoteness of the area and the distance to access existing transmission facilities. We make the following observations regarding the construction of transmission lines to serve the area:

- The shortest route would be from Boulder, Utah, east to Ticaboo, along the Burr Trail. However, with the government agencies involved, this would require an "act of Congress" to get rights-of-way through the Wilderness Study Area's (WSA's), National Parks, Monuments, etc.
- Coming through Wayne County east to Hanksville, and then south to Ticaboo may be a viable option, but would be very costly due to the necessary upgrades to the existing transmission system, and going through Capitol Reef National Park where existing lines are on the ledges and not perceived to be scenic. Moreover, an additional new line would be necessary through the area because of the increased projected loads.
- A possible route with the fewest environmental hurdles might be from near Green River to Hanksville, and then south. Again, the costs of transmission facilities for approximately 120 miles would be very high. If Garkane could acquire a delivery point from Rocky Mountain Power near Green River and could negotiate a power supply from our wholesale provider, we may be interested in serving the area from that direction, with the caveat that the total costs are paid by the requestors and guarantees are made on the purchases into the future.

Finally, in our opinion, there needs to be a clear political signal on energy policy from a national perspective, as most of the projected load growth in Ticaboo is "uranium" related. Financial markets are currently very cautious in their approach to investments in nuclear or coal related projects because of the risks and political uncertainties. Absent some type of political assurance it would be difficult for any entity to commit resources to this project.

Please contact us if you have additional questions or comments.

Respectfully,

GARKANE ENERGY COOPERATIVE, INC.



Carl R. Albrecht  
CEO



2217 Kittyhawk Drive  
Cedar City, Utah 84720

September 30, 2008

Mr. Justin Fischer  
Garfield County Planner  
55 South Main Street  
PO Box 77  
Panguitch, Utah 84759

Dear Mr. Fischer,

In response to your RFP for electric energy in the Ticaboo area of Garfield County, Rocky Mountain Power is providing the following information. I believe you have been given this information previously. In order to maintain continuity in how we perform our business, and to be sure we treat all customer requests the same, we will follow the format as shown below.

The Public Service Commission orders delineating Rocky Mountain Power's service territory in the Ticaboo area are unclear. We have discussed this issue with Garkane Energy and will work towards defining territory boundaries.

Meanwhile, Rocky Mountain Power has reviewed three options to provide electrical service to the area. Costs quoted are very rough numbers to be used for indication purposes only. More detailed engineering design and permitting would need to be conducted to determine the viability and requirements for each option, which may have significant impacts on project costs. The options reviewed are:

**Option #1: 138 kV line - Emery County near Green River: Cost: \$49,000,000**

Advantages - Follows highway from Green River, Hanksville and Bullfrog  
Permitting may be easier

Disadvantages - Distance is further than other options  
- unknown impacts to Helper - Moab 138 kV line

**Option #2: 138 kV line - San Juan county near Monticello: Cost: \$41,500,000**

Advantages - Lower expected cost than option one.

Disadvantages - Permitting is anticipated to be difficult and complex.  
- unknown impact to Pinto 345-138 kV transformers

**Option #3: 138 kV line - San Juan county near Blanding: Cost: \$38,500,000**

Advantages - Anticipated lowest cost alternative

Disadvantages - Permitting is anticipated to be difficult and complex.  
- unknown impact to Pinto 345-138 kV transformers  
- unknown impact to Pinto - Abajo 138 kV line

**The steps to move forward with the project are:**

- 1.) Sign an Engineering Services Agreement and forward \$50,000 to initiate preliminary engineering, including scoping, analysis, and material and permitting requirements. Any amounts forwarded in this phase that are not spent will either carry forward into future phases or be refunded to customer if customer elects not to continue with the project.
- 2.) Upon completion of preliminary engineering, Rocky Mountain Power will provide you with preliminary project information, such as the project scope, a +/- 30% cost estimate (excluding permitting costs) and a preliminary schedule.
- 3.) Customer will then be asked to sign an Engineering and Materials Procurement agreement that will provide sufficient funding to move forward with ordering long lead materials, completing detailed engineering design, obtaining permits and bidding the project to construction firms for building the power line. At the conclusion of this process, final estimates of construction costs, financial terms for service and construction timelines will be provided to the customer to make a final decision whether or not to move forward to receive service from Rocky Mountain Power.
- 4.) Customer will then sign a Master Electric Service Agreement that will stipulate terms for construction and delivery of electrical power to customer. Upon execution of this agreement, Rocky Mountain Power will move forward with construction of the facilities to provide service.

Since there are multiple parties in the area requesting service, either one or all parties combined will need to provide sufficient financing and guaranteed minimum usage to fund such a large project. We will also require some form of credit and payment guarantees to ensure the facilities have sufficient usage over a sustained term of service to fund the ongoing operation and maintenance expenses of the facilities to provide power to the area.

I would be happy to meet with you and any others interested in this project to review it in more detail and provide additional information you may need to determine how to move forward.

Sincerely,

A handwritten signature in black ink that reads "Mark B. Cox". The signature is written in a cursive style with a large, stylized "M" and "C".

Mark B. Cox

Rocky Mountain Power

Customer & Community Manager

2217 West Kittyhawk Drive

Cedar City, Utah 84720

435-865-3301



**17B-2a-406. Improvement districts providing electric service -- Public Service Commission jurisdiction -- Exceptions.**

(1) (a) An improvement district that provides electric service as authorized under Subsection **17B-2a-403(1)(a)(iv)**:

(i) is a public utility and subject to the jurisdiction of the Public Service Commission;

(ii) may include only an area where:

(A) no retail electricity has been provided to commercial, industrial, residential, and other users of electricity from an investor-owned utility; and

(B) electric service is provided to at least one user of electricity within the area proposed to be served by the electric service district as of September 1, 1985.

(b) Nothing in this part may be construed to give the Public Service Commission jurisdiction over:

(i) an improvement district, other than an improvement district that provides electric service as authorized under Subsection **17B-2a-403(1)(a)(iv)**; or

(ii) a municipality or an association of municipalities organized under Title 11, Chapter 13, Interlocal Cooperation Act.

(c) Before an improvement district providing electric service serves any customer, the improvement district shall obtain a certificate of public convenience and necessity from the Public Service Commission.

(2) (a) Section **54-7-12** does not apply to rate changes of an improvement district that provides electric service as authorized under Subsection **17B-2a-403(1)(a)(iv)** if:

(i) the district is organized for the purpose of distributing electricity to customers within the boundaries of the district on a not-for-profit basis;

(ii) the schedule of new rates or other change that results in new rates has been approved by the board of trustees of the district;

(iii) prior to the implementation of any rate increases, the district first holds a public meeting for all its customers to whom mailed notice of the meeting is sent at least ten days prior to the meeting; and

(iv) the district has filed the schedule of new rates or other change with the Public Service Commission.

(b) The Public Service Commission shall make the district's schedule of new rates or other change available for public inspection.

**Deleted:** within any part of an area certificated by the Public Service Commission or an area adjacent to that area, municipal agency, or electric cooperative within the five years immediately preceding September 1, 1985

**Deleted:** ; and  
(iii) shall have filed an application for certification and received approval by the Public Service Commission by September 1, 1986.



**78B-6-520. Action to set aside condemnation for failure to commence or complete construction within reasonable time.**

(1) When the state or one of its subdivisions acquires property through condemnation or threat of condemnation fails to commence construction on and use of all of the property within a reasonable time as specified by the court or by agreement of the condemnor and condemnee, the condemnee may file an action against the condemnor to set aside the condemnation or condemnation agreement pertaining to the entire parcel or any portion upon which construction and use was to have taken place.

**Deleted:** In an action to condemn

**Deleted:** the purchase agreement

**Deleted:** , if the court makes a finding of what is a reasonable time for commencement of construction and use of all the property sought to be condemned and the construction and use is not accomplished within the time specified, the

**Deleted:** of

**Deleted:**

(2) In the action, if the court finds that the condemnor, without reasonable justification, did not commence or complete construction and use within the time specified, it shall enter judgment fixing the amount the condemnor has paid the condemnee, as a result of condemnation and all amounts due the condemnee as damages sustained by reason of condemnation, including damages resulting from partial completion of the contemplated use, plus all reasonable and necessary expenses actually incurred by the condemnee including attorney fees.

(3) If amounts due the condemnee under Subsection (2) exceed amounts paid by the condemnor, or these amounts are equal, judgment shall be entered in favor of the condemnee, which judgment shall describe the property condemned and award judgment for any amounts due condemnee. A copy of the judgment shall be filed in the office of the county recorder of the county, and the property described in the judgment shall vest in the condemnee.

(4) If amounts paid by the condemnor under Subsection (2) exceed amounts due the condemnee, judgment shall be entered describing the property condemned and giving the condemnee 60 days from the date of the judgment to pay the difference between the amounts to the condemnor. If payment is made, the court shall amend the judgment to reflect the payment and order the amended judgment filed with the office of the county recorder of the county, and the property described in the judgment shall vest in the condemnee. If payment is not made, the court shall amend the judgment to reflect nonpayment and order the amended judgment filed with the county recorder.

(5) If a condemnor acquires property under threat of condemnation, the condemnor must inform the condemnee in writing of the condemnee's right to specify by agreement with the condemnor what a reasonable amount of time for commencement of construction and use of all of the property would be and the possible reversion of title under this section if the condemnor fails to commence construction on and use of all of the property within that period of time.