

**Date: February 20, 2015**

**To: Utah League of Cities and Towns Legislative Policy Committee**

**From: Cameron Diehl, ULCT Director of Government Relations; Ken Bullock, ULCT Executive Director; and Roger Tew, Senior Policy Analyst**

**RE: Analysis of HB 362 – Transportation Infrastructure Funding**

Hello ULCT members,

ULCT staff has prepared a legal analysis and a ULCT staff recommended position for each section of HB 362. ULCT staff appreciates Representative Johnny Anderson for proposing it and for propelling the dialogue about utilizing a local option sales tax to address local transportation needs. ULCT staff has analyzed each piece of the bill and provided some questions to guide discussions among ourselves and with policymakers. For years, ULCT staff and ULCT members have met with lawmakers to express our transportation needs and offer solutions. At this point, ULCT staff believes that it is premature to support or oppose the bill until we address some of the key issues and potential consequences described below. We have pledged to continue the conversation and urgently request your feedback about the following issues. We intend to have a lengthy discussion on HB 362 and the other transportation bills during Monday's LPC.

**I) HB 362 SYNOPSIS:**

HB 362 authorizes counties to impose a quarter cent sales tax dedicated to transportation subject to voter approval. The quarter cent would allocate .10% to cities and towns, .10% to transit districts entirely in the county of origin, and .05% to the county for regionally significant projects. The quarter cent in counties without a transit district would be allocated .10% to cities and towns and .15% to counties. The .10% cities and towns portion would be distributed according to the B&C road formula (not the 50/50 sales tax formula), which is 50% based on lane miles and 50% based on population. The sales tax revenues could be spent broadly on transportation infrastructure but may not supplant existing local transportation spending. HB 362 does not authorize cities and towns to impose the tax themselves but instead renders the cities and towns dependent on the county governing body to impose the tax and on voters county-wide to approve the tax. Finally, HB 362 modifies the existing 24.5 cent motor fuel tax to a 14% sales tax which would then shift annually based on the statewide average rack price from the previous year.

For the past few months, ULCT staff (Ken Bullock, Cameron Diehl, Roger Tew, Nick Jarvis, Jodi Hoffman) has visited many council meetings around the state to gather support for local transportation funding. The key issues that you—both you as elected and appointed officials—raised during those meetings will be addressed below in our analysis of HB 362.

## II) KEY ISSUES ON LOCAL OPTION SALES TAX PIECE:

**A) Allocation formula (in HB 362, it is .10 cities/towns, .10 transit, .05 counties; or .10 cities/towns, .15 counties in areas without transit)**

**B) Who imposes the sales tax (county or city/town) and how it is spent**

**C) Voter approval of sales tax (yea/nay; see current law)**

**D) How the sales tax is distributed (B&C road fund or 50/50 sales tax distribution)**

**E) Maintenance of Effort**

### **A) ALLOCATION FORMULA BETWEEN CITIES/TOWNS/COUNTIES/TRANSIT**

In general, ULCT supports the proposed .10/.10/.05 split within counties with a county-wide transit system. The revenue would be split .10 to cities and towns, .10 to transit systems, and .05 to counties for regionally significant transportation facilities.

The ULCT proposal was that cities and towns could impose a full quarter cent for transportation. Alas, since the February 9 LPC, key legislators made it clear that the quarter cent would need to be split among municipalities, counties, and transit. ULCT staff and the ULCT board considered the .10/.10/.05 as the only realistic split of the quarter cent and agreed to support the split. However, the .10/.10/.05 split does change the dynamic. The full quarter cent would have satisfied most of the local transportation needs. The .10 of a cent only satisfies a portion of the transportation needs. The .10 of a cent could combine with motor fuel tax changes to generate more revenue.

**Policy question for ULCT members: Is the .10 cent sufficient for cities and towns to support the concepts described below?**

#### **i) Allocation outside of transit system**

*Lines 115-135: If the entire boundary of a county that imposes a sales and use tax is not within a single public transit district, the sales and use tax shall be expended as .10% to the county and cities and towns ... and .15% for the county for regionally significant projects.*

- ULCT recommended position: AMEND
- ULCT explanation: In counties without a transit district, the entire .10 reserved for transit would stay at the county level. The .15 allocation for counties would be 3 times the allocation for the counties with a transit district. ULCT believes that .10 should be divided evenly between cities and counties so that the allocation should be .15 for cities and towns and .10% for counties.

#### **ii) Allocation within transit system**

*Lines 93-98: "if the entire boundary of a county that imposes a sales and use tax is within a single public transit district organized under 17B-2a-8, then .10% transferred to the public transit district"*

- ULCT recommended position: SUPPORT the .10 to transit and AMEND the definition of which public transit district qualifies for the .10%
- ULCT explanation: ULCT seeks to AMEND the qualifying public transit districts so as to include more than just the public transit districts organized under 17B-2a-8. Currently, only the Utah Transit Authority and the Cache Valley Transit System are organized under 17B-2a-8. Meanwhile, the Park City transit system is organized under Utah Code 59-2-22.15. St. George City operates the transit system SunTran and the Uintah Basin Association of Governments operates the Basin Transit Authority. ULCT is still awaiting their organizing statutes. ULCT believes that any money that the state authorizes for local governments to allocate to transit should be allocated equitably in all existing transit systems around the state.

## **B) Municipal and county authority to impose their portions of the quarter cent**

*Lines 88-90: "A **county** legislative body may impose a .25% quarter cent sales tax"*

- ULCT recommended position: AMEND
- ULCT explanation: The county legislative body should impose .15 sales tax and the city or town legislative body should impose the other .10 sales tax. ULCT staff is concerned that this bill could create a difficult precedent for any future municipal revenue to be dependent on county governing board approval. ULCT staff believes that city and town legislative bodies should have the same authority and opportunity to impose their portion of the tax as the county legislative bodies. Longstanding ULCT policy declares that municipalities should have the authority to self-govern and not be subject to county or state approval of municipal budgetary actions.
- Additionally, ULCT's legal team is concerned that the Utah Constitution prohibits revenue sharing among government entities. ULCT staff is concerned that a county imposed tax that is then allocated to another governmental entity (cities/towns) could be unconstitutional.

*Lines 98-112: .10% distributed to the county and cities and towns within the county using the apportionment formula described in Subsection (6) (line 136-150) and expended for:*

*Class B & C road, traffic and pedestrian safety, sidewalk, curb and gutter, safety feature, traffic sign, traffic signal, street lighting, active transportation facility that is for nonmotorized vehicles and multimodal transportation and connects an origin with a destination*

- ULCT recommended position: SUPPORT the .10 and AMEND definition of transportation
- ULCT explanation: ULCT staff recommends that the definition of transportation should include transit in the options for which cities and towns can use their portion of the .10.

*Lines 113-114: .05% shall be expended by the county for one of more regionally significant transportation facilities*

- ULCT recommended position: SUPPORT
- ULCT explanation: ULCT staff supports the investment in regionally significant transportation facilities.

**Policy questions for ULCT members: is the ULCT membership willing to accept that the county imposes the tax instead of the city or town imposing the tax? Is the ULCT membership willing to consider that a county imposition could set a precedent for any future local option tax authorities?**

### **C) VOTER APPROVAL**

Current law (Utah Code 59-12-2208(1)) governs HB 362. The statute *requires a county, city, or town legislative body to obtain approval from a majority of the members of the legislative body AND submit an opinion question to the county's, city's or town's registered voters voting on the imposition of the sales and use tax.*

- ULCT recommended position: OPPOSE
- ULCT explanation: ULCT staff believes that the municipal legislative body should impose the local option sales tax and NOT be subject to voter approval. Historically, when municipalities have imposed sales tax, municipalities have not been dependent on either the county or on voter approval. Additionally, UTA must get voter approval for any tax increase because the UTA board is not legally authorized to impose a tax. Municipal legislative bodies are legally authorized to impose a tax.
- We believe that sufficient checks and balances already exist. First, legislative bodies are accountable to voters via the election process. Second, voters have the statutory authority already under state law to refer budgetary decisions. Finally, ULCT staff is concerned about setting a precedent of being dependent on the county governing body or on voter approval for future tax impositions.

**Policy question for ULCT membership: Is the ULCT membership willing to concede that local taxes should be subject to voter approval?**

### **D) DISTRIBUTION FORMULA**

*Lines 136-143: Revenue shall be apportioned by 50% in the ratio that the class B roads weighted mileage within the unincorporated area of the county and class C roads weighted mileage within each city or town within that county bear to the total class B and class C roads weighted mileage within the county; and 50% shall be apportioned in the ratio that the population of a city, town, or total unincorporated area of a county bears to the total population of the county.*

- ULCT recommended position: OPPOSE
- ULCT explanation: The bill currently seeks to apply the allocation formula from the motor fuel tax to the city and county portion of the proposed quarter cent sales tax local option. The bill would create a new B&C road formula that would silo revenue to stay in each county. However, the motor fuel tax allocation formula (B&C road formula) was initially crafted for statewide equity on the motor fuel tax and has a historical nexus with lane miles. Likewise, the proposed local option sales tax does not have the same nexus with lane miles because it can be used more broadly on additional transportation options.

- As this local option is a sales tax, ULCT believes that the sales tax should use the long-standing municipal sales tax formula. The sales tax formula is 50% based on the point of sale and 50% based on the ratio that the population of a city, town, or total unincorporated area county bears to the total population of the state population. Likewise, the local option sales tax should have a nexus to existing sales tax law rather than mixing the motor fuel tax formula and sales tax authority.
- ULCT believes that cities and towns should have the authority to impose the .10 via the city and town governing boards. Every city and town that imposes the tax would be included in the 50/50 sales tax formula which would be slightly modified to only include those cities and towns that impose the tax. Consequently, the 50% population ratio would be based on the ratio that the population of an imposing city, imposing town, or imposing unincorporated area county bears to the total population of the entire pool of the imposing cities, towns, or counties.

**Policy question for ULCT membership: Is the ULCT membership willing to use a different formula for a sales and use tax?**

#### **E) MAINTENANCE OF EFFORT**

*Lines 151-152: Revenue collected from a sales and use tax under this section may not be used to supplant existing revenue a county, city, or town budgets for transportation.*

- ULCT recommended position: SUPPORT
- ULCT explanation: The legislature expects that this new revenue would be dedicated to transportation AND not supplant existing revenue that cities and towns are currently using on transportation.

#### **III) KEY ISSUES ON MOTOR FUEL TAX PIECE:**

*Lines 284-286: A tax is imposed at the rate of 14% of the statewide average rack price of a gallon of motor fuel per gallon upon all motor fuel sold or used in the state beginning on July 1, 2016 ...*

*Lines 287-305: Beginning January 1, 2017, the commission shall adjust the minimum statewide average rack price of a gallon of motor fuel. The statewide average rack price of a gallon of motor fuel shall be determined by calculating the previous calendar year statewide average rack price, and it may not be less than \$1.75 per gallon and may not exceed \$4.00 per gallon.*

- ULCT recommended position: SUPPORT
- ULCT explanation: This bill would change the current motor fuel tax from 24.5 cents per gallon to a sales tax of 14% in 2016. In 2017 and beyond, the motor fuel tax would be adjusted annually. The motor fuel tax is allocated by a formula that reserves 70% to the state and 30% to cities, towns, and counties. Cities and towns would continue to receive their portion of the 30% of the 24.5 cent conversion.
- At this point, the House and Senate have varied perspectives on how to address the motor fuel tax. Senator Kevin Van Tassell's SB 160 is awaiting debate on the Senate floor after the Senate

Transportation Committee recommended it last week. SB 160 would increase the current motor fuel tax by 10 cents and maintain the 70/30 split.

- ULCT staff recommends that ULCT support all of the motor fuel tax options currently under consideration and recommends that ULCT members work closely with state policymakers to determine which motor fuel tax option is the most feasible and effective course of action.

**Policy question for ULCT membership: Is the ULCT membership willing to support any modifications to the motor fuel tax?**

#### **IV) CONCLUSION**

In summary, ULCT staff has tried to raise questions and potential consequences that ULCT membership must address before endorsing any local option sales tax bill. Please realize that the imposition of the tax, the voter approval requirement, and distribution are at the core of this issue. We appreciate Representative Anderson's leadership on this bill and throughout the interim. We look forward to working with him and the other stakeholders and we appreciate the opportunity to represent you on this issue.