



March 9, 2018
The Honorable Governor Gary Herbert
350 North State Street, Suite 200
PO Box 142220
Salt Lake City, UT 84114-2220

Dear Governor Herbert,

On behalf of Utah's 247 municipalities, the Utah League of Cities and Towns (ULCT) requests that you veto SB 234 fourth substitute Utah Inland Port Authority. The ULCT opposes the bill because it violates two core principles of local control—land use authority and local property tax increment—and may be unconstitutional.

I) ULCT principles of local control:

At the ULCT 2017 Annual Convention, our membership unanimously endorsed Resolution 2017-001A which declares:

1. Cities and towns within the State of Utah commit that they are willing and ready to collaborate and partner with the State, the business community, and other stakeholders to pursue a broad range of future economic development opportunities, including those located in proximity to State transportation infrastructure.
2. Cities and towns cannot support development proposals, task forces, commissions, districts, *development authorities*, or other legislation that would deprive local municipalities of their traditional local land use authority on private property, or deprive them of control of tax increment generated within their jurisdiction *without their consent*. (italics added for emphasis)

Salt Lake City negotiated in good faith for months about the proposed inland port authority. In fact, Salt Lake City publicly and repeatedly declared their intent to develop an inland port in the northwest quadrant of the city. The questions revolved around state involvement, scope of the proposed development authority, legal parameters for land use, and taxation. SB 234 fourth substitute impacts approximately 19,500 acres in Salt Lake City which constitutes approximately 27% of the total land within the largest and oldest city in the state of Utah. Nevertheless, the legislature passed SB 234 fourth substitute to create a development authority that will deprive Salt Lake City of its traditional local land use authority and deprive them of control of tax increment without the consent of Salt Lake City.

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II) Land use authority: incongruence with existing law, vagueness, and lack of due process

SB 234 creates new legal standards for administrative land use review that are incongruent with the Land Use Development and Management Act (LUDMA) and vests the land use review of city decisions into a review body independent of the city or city ordinance. Under the long-standing administrative land use review standards in LUDMA (§10-9a-707(4)), an appeal authority shall “determine the correctness of the land use authority’s interpretation and application of the plain meaning of the land use regulations.” Courts will also review administrative land use decisions on the “correctness” standard and will examine the plain meaning of the underlying local legislative land use ordinances.

SB 234 creates an appeals panel that will review an administrative land use decision based on a new vague and unenforceable standard: “(1) is detrimental to achieving or implementing the strategies, policies, and objectives stated in Subsection 11-58-203(1); or (2) substantially impedes, interferes with, or impairs authority jurisdictional land development that is consistent with the strategies, policies, and objectives stated in Subsection 11-58-203(1).” The “strategies, policies, and objectives” include language about economic benefits and economic development, creation of jobs, sensitivity to the environment and air quality, and the ability to make land attractive to business, transportation, and infrastructure. Under LUDMA, a city must provide substantial evidence on the record for the administrative land use decision so that the reasons are clear enough to enable judicial review. SB 234 defers to “strategies, policies, and objectives” which are vague, undefined, impossible for purposes of judicial review, and incongruent with the existing LUDMA statute and related case law.

In addition, SB 234 undermines the transparency, review standards, and due process requirements that LUDMA has set for local governments that works effectively and efficiently for property owners and governments. For example, SB 234 does not require a formal hearing, does not identify whether reviews are done de novo or on the record, and does not require notice to the city that the appeals panel may review or overturn a municipal land use decision.

Consequently, ULCT opposes the creation of an administrative land use appeal board with standards that are incongruent with established standards and processes in LUDMA.

III) Tax increment: usurpation of local authority, unfunded mandate, and taxation without representation

SB 234 fourth substitute empowers the port authority to take up to 100% of the city’s property tax increment for up to 25 years. For the portion of the port authority jurisdiction within Salt Lake City boundaries, Salt Lake City estimates that the port authority will redirect approximately



\$360 million in new municipal property tax revenue and approximately \$581 million in new Salt Lake City School District property tax revenue. Despite the severe loss of tax revenue, Salt Lake City will still be responsible to provide municipal services such as police and fire protection, roads (construction, maintenance, snow removal, etc.), sidewalks, emergency response, water, sewer, street lighting, and more. SB 234 creates a 25 year unfunded mandate on Salt Lake City at the same time the bill contemplates arguably the largest development that the State of Utah has ever witnessed across 27% of the city's land area. SB 234 will require the taxpayers of the remaining 73% of the city to subsidize the municipal services of the inland port authority area.

Additionally, SB 234 violates principles of taxation with representation and financial transparency of tax dollars. For example, the tax increment language creates a new precedent of allowing a political subdivision—the port authority—to take property tax revenue generated within one city within the port authority area and spend it within the port authority area outside of the city. The taxpayers within the area have only one of the eleven board members—the Salt Lake City Council member who is just one of two Salt Lake City representatives on the eleven member board—who is directly accountable to them for how their tax dollars are spent in the area.

Consequently, ULCT opposes SB 234's usurpation of traditional local tax authority, unfunded mandate, and violation of the longstanding principle of taxation with representation.

IV) Constitutional concern:

Article VI, Section 28 of the Utah State Constitution prohibits the legislature from “delegating to any special commission the power to make, supervise, or interfere with any municipal improvement, money, property, or effects, whether held in trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions.” SB 234 fourth substitute arguably creates a special commission by another name with municipal authority including but not limited to the ability to bond, create infrastructure, and exercise administrative land use authority. As such, we believe that SB 234 may violate Article VI, Section 28. Litigation over Article VI, Section 28 could delay the implementation of the bill and the development of the inland port authority.

V) Conclusion:

The ULCT shares your objective of developing an inland port in Utah. Salt Lake City's elected officials also share that objective and have dedicated significant time and resources to creating the framework for an inland port in the northwest quadrant of the city. Despite our shared vision and Salt Lake City's efforts to date, SB 234 is nothing short of a state takeover of a swath of Salt Lake City without the city's consent, which also creates irreparable legal, taxation, and policy precedents. SB 234 may only directly impact Salt Lake City, West Valley City, and Magna Metro

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Township today, but this bill sets a precedent of a future state takeover of any city's land use or taxation authority. The sweeping consequences of SB 234 are bigger than one city or a proposed inland port authority. We believe signing this bill into law will likely result in litigation and in turn delay the development of the shared objective.

SB 234 is an affront to local government principles and is the very definition of state overreach. Salt Lake City, ULCT, the private property owners, and all stakeholders are committed to a solution. On behalf of municipalities across the state, we urge you to veto SB 234 and to call on all stakeholders to return, in the "Utah way," to the negotiating table to reach consensus.

Sincerely,

A handwritten signature in black ink that reads 'Beth Holbrook'.

Beth Holbrook
Council Member, Bountiful
ULCT President

A handwritten signature in black ink that reads 'Jon Pike'.

Jon Pike
Mayor, St. George
ULCT 1st Vice President

A handwritten signature in black ink that reads 'Mike Mendenhall'.

Mike Mendenhall
Council Member, Spanish Fork
ULCT 2nd Vice President

A handwritten signature in blue ink that reads 'Steve Hiatt'.

Steve Hiatt
Former Mayor, Kaysville
ULCT Immediate Past President

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