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Utah Legislative Update: 2018 - Part Two

Insight — 02/27/2018

Mid-Way Point of the Utah Session:

We are at the mid-way point of the Utah Legislative Session. The pace of work increases and each day gets longer the closer we get to the midnight finish on the 45th day of the session. The President's Day weekend always features the final revenue estimates that reveal to the legislature just how much money is available in the budget. Earlier budget forecasts have indicated a budget surplus from the prior fiscal year, pass-through income from federal tax reform, and organic revenue growth from a growing economy. After completely repaying the Rainy Day Fund from the totals borrowed during the Great Recession (\$85 million), fixing a budgeting issue with the Firefighter Retirement Program (\$15 million), and paying a statutory amount to the Tourism Marketing Performance Fund (\$3 million), the new revenue projections still total \$581 million in revenue above base budgets. This total doesn't include the \$25-\$80 million from federal tax reform pass-throughs and is ahead of even last year's revenue growth totals.

Allocation of Fault Amendments:

Rep. Mike McKell (R-Spanish Fork) has introduced HB359 Allocation of Fault Amendments. This bill is raising some eyebrows among the business community because it creates joint and several liability for individuals and businesses that fail to prevent an intentional tort. The broader business community is concerned that the bill creates a potential liability for individuals or businesses not involved in the wrongful act based on the intent of the person committing the act. Currently in Utah, a corporate defendant is only responsible for its proportional amount of negligence. HB359 would make a defendant liable jointly and severally for the fault resulting from another party's intentional tort, as well as impose a duty to anticipate and protect against the consequences of a third party's intentional actions. If this bill were to pass, it is anticipated that every intentional tort lawsuit would name the business organization as well as the officers and directors as co-defendants in order to provide plaintiffs' counsel with maximum leverage for settlement.

Private Attorney General Doctrine:

Rep. Brian Greene (R-Pleasant Grove) and the Libertas Institute are pushing HB79, which would repeal a section of State code that currently prohibits the recovery of attorney's fees by the prevailing party under the private attorney general doctrine. Rep. Greene believes the current prohibition is unconstitutional and ought to be repealed. Many within the business community believe that the repeal would encourage additional litigation against businesses because the potential of recovering attorney's fees would motivate businesses to settle lawsuits that should not otherwise

be settled, particularly those businesses in the natural resource extraction industries.

Income Tax Cuts & Single Sales Factor for Business Apportionment:

The vast majority of the revenue surplus, revenue growth, and federal tax reform funds are coming from the income tax side of the tax equation this session. This is prompting many in the legislature to consider income tax cuts or reform in that area rather than in sales, property, or severance taxes. Rep. Dan McCay (R-Riverton) has two bills that deal with cuts or reforms to income tax. The first, HB 355 Amendments to Tax Law, would lower both personal and business income taxes from 5% to 4.925%. The second, HB 374 Apportionment of Business Income Amendments, would move all but a select few industries to a single sales factor formula for calculating business income tax rather than the existing formula that also considers payroll and property. Those industries in the optional category would have a one-time election window to move to the single sales factor formula or stay with their current formula.

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