



SUMMARY OF 2023 UTAH STATE LEGISLATIVE SESSION

The 2023 Utah State Legislative Session is being described as the most consequential legislative session in the last 100 years, with significant legislation adopted related to water, affordable housing, education, taxes, ESG, Social Media, Courts, Digital Assets, Higher Ed Governance, judicial nominating, homeless funding.

As it relates to banking, this was the most challenging legislative session I have experienced since 2003 (taxing state credit unions). Here is a summary of the major issues on which we engaged. Unless otherwise noted, all passed bills become effective 60 days after adjournment – **May 3, 2023** (unless vetoed by the Governor by March 23, 2023.)

ESG LEGISLATION

During the interim period leading up to the session, legislators filed more than 30 bill requests for legislation focused on pushing back against national ESG efforts. Legislative leaders recognized that this could get out of control and organized a working group to consolidate and coordinate efforts. The working group narrowed the effort to 4 areas:

1. Ensuring the state doesn't invest its money with investment firms that might use those resources to drive ESG policies,
2. Ensuring the state does not contract with entities that refuse to support/serve companies for ESG reasons,
3. Giving companies a legal remedy to recover damages when they are unable to acquire certain critical products and services because of ESG discrimination.
4. Prohibiting the use of a social credit scores to allocate credit or other government services.

State Treasurer Marlo Oaks has become a national voice on this subject and played a significant role in this initiative. In the end, four bills and one resolution were adopted.

SB 96 - Fiduciary Duty Modifications

This bill requires a public entity to make investment decisions with the sole purpose of maximizing the risk-adjusted return on the investment and ensure their proxy voting is exercised to maximize risk-adjusted returns and make those proxy voting records available to the State Treasurer upon request. Former treasurer Richard Ellis who is now running the state's 539 plan made considerable efforts to get this bill into a shape where it is workable.

This bill passed the House and the Senate with veto-proof majorities mostly along party lines.

SB 97 – Public Contract Requirements

This bill prohibits state and local entities from entering into contracts with businesses that engage in economic boycotts of companies that:

1. engage in the exploration, production, utilization, transportation, sale or manufacturing of fossil fuel based energy, timber, mining or agriculture; or
2. engage, facilitate, or support the manufacture, distribution sale or use of firearms, or firearms industry or

3. do not meet or commit to meet environmental standards, including standards for eliminating, reducing, offsetting, or disclosing greenhouse gas-emissions beyond state and federal requirements, or
4. do not facilitate or commit to facilitate access to abortion or sex characteristic surgical procedures.

We spent months providing input on this bill in hopes of ensuring legislators that legislation was not necessary in this area. However, as the session commenced and the legislation was introduced, leaders in both the House and the Senate made it clear that something was going to pass in this area. In fact, this bill really became the focal point of the Legislature's ESG initiative. At that point, our objective evolved to focus on ensuring that 1. Companies that were not engaged in boycotts did not get excluded from state contracting, and 2. Companies that were not engaged in boycotts did not decide to withdraw from bidding in order to avoid legal disputes. Both of these things happened in Texas and it cost the state more than \$500 million in increased costs and fees.

Our focus was clarity and workability. We successfully eliminated any private right of action and limited any penalties to the costs associated with losing the contract. We eliminated a provision that would have required every successful bidder to pledge they would not become a "boycotter" during the life of the contract and replaced that with a simple notice requirement. We also clarified that such notice "may" result in the loss of the contract, but didn't require the termination of the contract. We worked hard to tighten up the definition of Economic Boycott and clearly exclude decisions that were made in the normal course of business. We also pushed for clarification of the "normal course of business." Additionally, we successfully included an exemption that applies to boycotts required under federal law or regulation. In this case, a bank engaged in a boycott as a result of federal regulation would not sign the certification, but the public entity could ignore the prohibition and contract with the company.

Late in the process, there was strong pushback from significant economic interests to remove the Diversity, Equity and Inclusion driven boycotts from the bill. The Governor and legislative leaders agreed to that.

Additionally, we had hoped to delay the implementation date to give all parties a year to adjust their processes and evaluate the intended and unintended consequences of the bill. The Governor was supportive of that effort as well, but we couldn't get agreement from the sponsors or the Treasurer.

This bill passed the House and the Senate with veto-proof majorities mostly along party lines.

HB 449 Business Services Amendments

This bill provides a private right of action to companies that lose access to all viable options for essential business services due to a coordinated effort among providers of those services to deny them those service because the company is:

1. engaged in the exploration, production, utilization, transportation, sale or manufacturing of fossil fuel based energy, timber, mining or agriculture; or
2. engaged in, facilitates, or supports the manufacture, distribution sale or use of firearms, or firearms industry.

The goal of the sponsor was to provide a tool for companies impacted by a coordinated boycott to seek damages, so there was no way to eliminate the private right of action. Therefore, our efforts were focused on clearly defining and limiting the exposure of the bill to the concerns described by the sponsor. In order to be liable for damages a provider of services would have to coordinate or conspire with another company to eliminate the viable options for the boycotted company to obtain the product or service with the clear intent of destroying the company in the absence of an ordinary business purpose.

We did ask for a delayed effective date on this bill as well, primarily to avoid unintended consequences given that the bill was completely redrafted during the last week of the session. The sponsor agreed to a two-month delay, **July 1, 2023**.

This bill passed the House and the Senate with veto-proof majorities mostly along party lines.

HB 281 Social Credit Score Amendments

The sponsor of this bill we very concerned by reports out of China where the government was using a scoring model that includes political and social factors to determine what individuals can buy, where they can live and travel, etc. I was able to convince her that banks were not developing and using such scores here in America. So early in the session she amended her bill so that it only applied to government entities and public services. Nonetheless, she did include a provision that allows consumers to report instances where they believe that a social credit score was used by private companies to deny services. In this case we successfully amended the bill to refer complaints regarding banks to the Department of Financial Institutions. Additionally, the bill provides for an annual report to the Business and Labor Interim Committee. We narrowed that language to limit that report to include only complaints related to the use of a social credit score.

This bill passed the House and the Senate with veto-proof majorities mostly along party lines.

SCR 9 Resolution Opposing Efforts to Weaken the Economy or Restrict Energy Supply

In addition to the four ESG bills, this resolution regarding ESG was also adopted. We did not spend any of our time or capital seeking changes to this resolution.

TRACKED BILLS THAT PASSED (amended to resolve concerns)

SB 118 Water Efficient Landscaping Incentives

This bill provides financial incentives for individuals and companies to make their landscaping more water efficient. However, it also included a claw back provision if at a later date the landscaping is restored to a less water friendly condition. This claw back was given a super-priority lien position which created enormous problems for lenders. After numerous attempts to convince the water districts that the super-priority was overkill for what they were trying to do, we were able to remove the entire claw back provision, which eliminated the lien concerns.

SB 127 Cybersecurity Amendments

This bill creates the Utah Cyber Security Center to handle reporting related to security breaches impacting Utah citizens. It does not create any new reporting requirements for banks, but it does extend reporting requirements to government entities and directs all of these reports to the new Cyber Security Center.

HB 309 County Recorder Amendments

This bill was intended to restrict access to personal information that could be obtained from a county recorder. We successfully amended the bill to continue to allow certain parties, title companies, beneficiaries, etc., access to the original documents including the personal information. The amended bill was adopted in both houses.

TRACKED BILLS THAT FAILED (that we opposed or amended)

HB 64 Waiver of Punitive Damages

This bill prohibits contractual waivers of punitive damages. We successfully amended it to exclude institutions subject to GLB. The bill died in committee.

HB 382 Automatic Renewal Contracts Requirements

This bill requires a company that offers a contract with an automatic renewal provision to disclose certain information to the consumer regarding the renewal and cancellation of the contract. We found it's application to deposit contracts and credit card contracts to be problematic. We successfully amended the bill to exclude institutions subject to GLB. The bill moved from the House to the Senate and out of Senate Committee without opposition, but it ran out of time. I would expect to see it back next year.

HB 455 Service Member Lending Protections

This bill would protect service members from certain lending practices, but was duplicative of many provisions in the Military Lending Act. We met with the sponsor and convinced him to send it to study so that we could fully explore the problems he was trying to solve and determine if those were not already covered by the MLA.

HB 519 Consumer Credit Protection Amendments

This bill was an attempt to address confusion among some consumers surrounding their credit score. The sponsor was concerned that the credit score delivered through a credit monitoring subscription might not be the same score that was used when underwriting for a loan.

Originally, the sponsor wanted the provider of the credit score to provide a list of all the lenders that used that credit score to underwrite loans. With time and understanding, we were able to make amendments to the bill that made it workable, but did not address the main concern (which is probably impossible to resolve). The bill ran out of time in the Senate, but there is support to address this issue and we will likely have to engage on this again this summer.

SB 215 Insurance Adjuster Claim Amendments

This bill attempted to change the way insurance claim payments are distributed. We successfully amended the bill to preserve the rights of banks who have contractual lien against the insurance policy. The bill moved through the Senate and the House Committee without opposition, but it ran out of time on the House floor. I would expect to see this back next year.

BILLS RELATED TO DIGITAL ASSET TASK FORCE

SB 160 Blockchain Liability Amendments

This bill creates a cause of action for fraudulent transactions that have been committed on a blockchain that is structured to allow the reversal of transactions. We don't see how this could have any impact on the banking industry currently, but it could potentially provide remedies in the future for fraud committed in this area that could impact a bank or its customers. **This bill passed both bodies with little to no opposition.**

HB 357 Decentralized Autonomous Organizations Amendments

This bill allows a decentralized autonomous organization (DAO) that has not been registered as a for-profit corporate entity or a non-profit entity to be treated as the legal equivalent of a domestic limited liability company. The bill does not address KYC issues related to a DAO establishing banking relationships. **This bill passed both bodies with overwhelming support.**

HB 289 Blockchain Provider Registry

This bill establishes a state registry for companies using blockchain technology to facilitate financial transactions between users. Initially, the bill was focused on allowing these blockchain companies to register as money transmitters. After much discussion and debate about unintended consequences, the program turned into a registry housed in the Governor's Office of Economic Opportunity. **As amended, the bill passed with no opposition.**

HB 470 Government Digital Verifiable Record Amendments

This bill establishes a pilot program and requires the Division of Technology Services to provide recommendations to government entities regarding the issuance of digital verifiable credentials or records. The bill sets the stage for state and local governments to utilize blockchain technologies in the administration of duties. **The bill passed both bodies with little to no opposition.**