

# Capitol Capers

Bills that may have slipped right by us during Utah's highly unusual 2021 legislative session.

By Benjamin Wood

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City Weekly



No one can follow everything that happens at the Utah Legislature, and that was particularly true for the 45-day vote-a-rama that concluded on March 5.

In a typical legislative session, you're likely to learn as much about bills by sitting in the Capitol cafeteria as you are by watching debate from the House and floor galleries. Much of journalism is professional eavesdropping, and it's considerably harder to do in a socially distanced, virtual-first format.

Thus, I spent the week after session listening to committee hearings and chamber discussion that I had missed the first time around. Like any year in recent memory, schools got a funding bump, road projects were greenlit, Salt Lake City and County got jabbed in the ribs repeatedly, and certain taxes were cut—which could impact Utah's share of federal COVID-19 relief.

But with some 500 new or altered laws headed to the desk of Utah Gov. Spencer Cox, most will not get the attention they deserve. And for every nakedly sinister proposal that rightfully grabs the headlines—looking at you, transgender athletics ban—there are dozens that either die in darkness or tiptoe quietly into code.

And in interviews with *City Weekly*, several political observers suggested that the story of the 2021 Legislature is as much about what *didn't* pass as it is about what did.

"In the current majority leadership, there's a really strong libertarian streak," said Lauren Simpson, policy director for the Alliance for a Better Utah. "Freedom without responsibility, prioritizing big corporations and deregulation, often at the expense of the public welfare."



“We don’t want to keep people in jail simply because they don’t have means. And we don’t want to release people who might be a danger to society simply because they have a lot of money.”—Marina Lowe, ACLU of Utah

### **Bonds, Jail Bonds**

Last year, Utah took a major step toward reforming cash bail, imposing new requirements that judges consider a defendant's ability to pay and impose the least restrictive pre-trial measures possible. Passing that legislation was no small feat and the sponsor—Rep. Stephanie Pitcher, D-Salt Lake—was praised for navigating the requests and objections of competing parties in the state's criminal justice industrial complex.

The new law took effect in October and by January, the wheels had fallen off.

"Nobody really knows exactly what went wrong," said Molly Davis, a policy analyst with the Libertas Institute. "But we know that what's being applied in one courthouse is completely different from what's being applied in the courthouse down the road."

Prosecutors in the state's largest counties—which handle the lion's share of Utah's criminal cases—said the new approach was beginning to bear fruit, with lower-level offenders able to live their lives ahead of trial while violent criminals remained safely locked away. Salt Lake County District Attorney Sim Gill went so far as to describe calls for repeal as "anecdotal, alarmist fearmongering" in an interview with *The Salt Lake Tribune*.

And Marina Lowe, with the American Civil Liberties Union of Utah, said the effects of the reform were further muddled by the coronavirus pandemic.

"We had jails trying to empty out their populations for COVID reasons," Lowe said.

But as lawmakers negotiated fixes to the problems, two bills representing two schools of thought emerged. One sought to tweak the existing law and allow more time for implementation, while the other called for repealing the reforms and effectively starting over on negotiations.

"The world was not falling apart," Sen. Kirk Cullimore, R-Draper, said of the old cash-bail system. "There were some issues that needed to be addressed, and we can do that."

Lawmakers ultimately adopted the repeal bill, and the issue remains as unsettled as ever. Cox has said he has not ruled out a veto—about as close as governors get to tipping their hands on legislation—and groups like the ACLU are urging him to do so.

"We don't want to keep people in jail simply because they don't have means," Lowe said. "And we don't want to release people who might be a danger to society simply because they have a lot of money."

Lawmakers insist they're operating in good faith, with the intent of reintroducing legislation to move away from cash bail. And Lowe said that while much of the reforms were repealed, the state's courts had already begun implementing new rules related to pre-trial detention, which will remain in place.

"The court has already gone down a certain path," Lowe said. "I think that will be the hook that requires everybody to come back to the table again."

Complicating matters further were the atypical alliances that formed around how best to move forward. Private defense attorneys and county sheriffs—often at odds with each other—were calling for repeal while county prosecutors split over the issue. And watching it all were Utah's bail-bonds companies, which have an obvious financial stake in how this all plays out.

"Ultimately we think it's really discouraging that the Legislature would be so quick to repeal all the good work that has been done on bail reform," Simpson said. "The broader picture is we're concerned about the influence the cash bail industry has in Utah."

### **Missing in Action**

Heading into January, there was every reason to believe that the 2021 session could turn into a showdown between police and protestors. The previous summer had seen a series of high-profile abuses by law enforcement, as well as discomfiting scenes of violence in city streets.

The roster of 2021 bills included a slew of proposals on all sides of the issue. Some lawmakers sought to rein in the police by weakening their legal immunities or by ending the practice of no-knock warrants—typified by the murder of Breonna Taylor in Kentucky—while others aimed to clamp down on demonstrators by altering the definition of gangs and riots or even by providing cover for anti-protest vehicular manslaughter.

"We sort of called it the 'License to Kill' bill," Lowe said. "Because it said you could run people over and kill them and not have any criminal or civil liability."

In the end, most of the more aggressive bills on those topics fizzled out while lawmakers took more incremental steps on police training and incident data tracking.

Davis, of the Libertas Institute, said the results were net-positive but squandered the momentum coming out of the summer months.

"I was surprised. I honestly thought this was going to be the year for a lot of police reform," Davis said. "And I am a little disappointed in some of the lack of movement on good bills that I thought were well-nuanced."

Also, notably absent from the session were bills on reproductive rights, a perennially popular and controversial topic for Utah's GOP-controlled legislative branch.

The issue had reached such volume in 2020 that lawmakers passed back-to-back laws banning abortions in clear defiance of Supreme Court precedent—on hold, pending litigation—and prompted every female member of the Utah Senate to exit the chamber in protest.

In 2021? Crickets.

"In my time at the ACLU, it's rare to have a session without an abortion bill," Lowe said.

Lowe suggested there could be fatigue after endless rounds of fighting on the issue. Or perhaps abortion opponents worried about the optics of imposing more restrictions on health care providers in the midst of a pandemic, she said.

The session was also spare on air quality and environmental legislation, which had built some momentum led by key lawmakers and with support from former Gov. Gary Herbert.

Meanwhile, House Speaker Brad Wilson and Senate President Stuart Adams took the atypical step of co-sponsoring legislation, ensuring the creation of a quasi-governmental body to wage war over access to the Colorado River.

"Water issues in the state can be really slippery," Simpson said. "We're living in a desert. We're living in an era of climate change. And I think it should raise some red flags that the Legislature is devoting \$8 million to litigate over this very-limited water supply instead of talking about how to conserve."

Simpson also questioned the structure of a massive infrastructure spending bill unveiled late in the session. House leaders had initially called for a more than \$2 trillion price tag—including a billion dollars in bonding—before the Senate walked it back.

Those plans call for a significant and necessary expansion to FrontRunner and other public transit initiatives, but largely consist of road projects.

"We're drilling holes in the public's piggy bank year after year," Simpson said. "We've got to start acting like a grown-up state and take some responsibility for quality of life."

- [Wikicommons](#)
- Lawmakers constantly try to address what they see as a deteriorating state of civics education that shape Utahns into future citizens.

### **The Bigger Picture of Democracy**

Every year, Utah lawmakers bemoan what they describe as the deteriorating state of civics education shaping our state's youth into adulthood. One might wonder how much of that is coded partisan disdain for the ostensibly left-of-center education apparatus, but I digress.

To date, proposed solutions have been typical of the Legislature's broader approach to public schools—namely, testing the ever-living daylights out of children. High schoolers must now pass the U.S. citizenship exam prior to graduation, and various tweaks to grade-level social studies standards have been implemented in recent years.

But this year, members of the House debated an entirely different approach—letting kids vote for school board. And while the proposal failed, it won a curious mix of bipartisan supporters and a refreshingly thoughtful debate on the House floor.

"I just don't think it is the worst idea in the world," Rep. Jordan Teuscher, R-South Jordan, told his colleagues, prompting a wave of laughter in the chamber. "It gives us a chance to get the kids excited about something while we still have them as a captive audience."

HB338, in its final form, would have allowed Utah school district boards of education to opt into a five-year pilot program in which 16- and 17-year-old constituents would be allowed to cast a ballot in school board races—and those races only.

The bill's sponsor—Rep. Joel Briscoe, D-Salt Lake—had accomplished similar legislation allowing 17-year-olds to vote in party primaries if their 18th birthday precedes the general election. He argued that voting is not so far removed from other things teens are legally capable of, such as working, paying taxes, owning a business, getting married, emancipating from their parents and standing trial as an adult. Briscoe described a "vicious cycle" in which young adults don't vote because they feel unrepresented in government but are then unrepresented in government because they don't vote. Extending a conditional franchise to high schoolers, he suggested, could begin to create a "virtuous circle."

"There is a bigger picture here, and the picture is democracy," Briscoe said. "The fear is whether we're going to survive, and I've had doubts the past year or two."

Those who spoke against the bill largely focused on the fickleness of youth. While some minors would be up to the task of responsible voting, they said, broad participation by children could "dilute" the "sacred" right of suffrage or leave school board elections vulnerable to crass, populist appeals.

"There are a lot of them who will just vote for Pedro because it's a super sweet dance," said Utah County Republican Rep. Brady Brammer, referring to the 2004 Idaho-set indie comedy *Napoleon Dynamite*. "We have to be careful about that."

School district administrators, for their part, were skeptical. The Salt Lake City School District was ready to pull the trigger and other Wasatch Front districts were open to considering the option, but the statewide association of district school boards formally voted to oppose the legislation.

Briscoe says he hopes to get the issue on an agenda for interim study and will likely reintroduce some version of the bill next year.

"If cities continue to not be fair to the billboard industry—whether it's this session or in the future—the Legislature will step in."—Sen. Todd Weiler, R-Woods Cross.

### **Signs of the Times**

Conflict is ever-brewing between cities and billboard companies, with the push of development butting up against efforts to convert analog ad spaces to next-generation digital displays. The billboard companies—among the most prolific campaign donors in the state—feel they're being unduly squeezed out of city centers (the Capital City, in particular) and have committed to a strategy of taking their concerns over the heads of municipal leaders to the more sympathetic GOP-controlled Legislature. Enter Sen. Scott Sandall, R-Tremonton, and his proposal to supersede city regulations on outdoor advertising and open the door to electronic billboard conversions over the objections of local leaders. Throughout the month of February, SB61 was put on hold, amended, put on hold, amended, put on hold, amended once more and finally brought up for a debate on the Senate floor in a watered-down format that Sandall said was meant to compel the warring factions to work together on a better bill next year.

"I'm not sure anyone is supporting the bill at this point," Sandall told his Senate colleagues.

But Sen. Derek Kitchen, D-Salt Lake (and a former Salt Lake City councilman), said he was skeptical of the billboard lobby's claims of unfair treatment at the hands of city governments. He argued it is reasonable

for Utahns to not want their highways, streets and neighborhoods subjected to the "Vegas treatment" of wall-to-wall digital advertising.

"I just don't see the inequity that the billboard companies are claiming exists here," he said.

The bill failed on a 12-15 vote in the Senate. Another pro-billboard bill didn't even make it that far.

Still, several of Sandall's GOP colleagues made a point to stand and compliment the Tremonton senator on his efforts, implicitly—and in some cases explicitly—telegraphing a warning that the battle is far from over.

"If cities continue to not be fair to the billboard industry—whether it's this session or in the future—the Legislature will step in," said Sen. Todd Weiler, R-Woods Cross.

Cooler heads also prevailed on a long-debated issue of letting cyclists treat stop signs as yield signs, something virtually every cyclist does already since breaking the law is preferable to breaking their necks.

That bill, sponsored by Rep. Carol Spackman Moss, D-Holladay, passed the Legislature with comfortable majorities. But several House members, including two from the GOP leadership, spoke in opposition, struggling with the concept of the bill and falsely characterizing it as putting the convenience of cyclists over that of other road users.

While letting bikes roll through intersections may appear counterintuitive, research and practical experience backs it up. Cars are most dangerous in motion, while cyclists are most vulnerable at a standstill. And, as Moss explained to her colleagues, bikers tend not to come out on top in the event of a collision.

"If they make a mistake, they're likely to lose their life," she said.

And after three years of debate, Utah has adopted a new state flag with—potentially—another one on the way.

A task force is set to convene in the coming months that will solicit, review and recommend designs for a state flag that could be adopted as early as next year. In the meantime, the so-called Martin Flag—a modern spin on the current design commissioned by businessman Richard Martin—has been adopted as the commemorative flag for the 125th anniversary of Utah statehood.

### **Mandatory Minimums**

Tucked into the hours of esoteric floor debate was a long-sought boost in pay for employees at Utah's state-run liquor stores. Because alcohol is still looked at with Volsteadian terror by many in our lovely Deseret, the Utah Department of Alcoholic Beverage Control (DABC) is firewalled from its robust profits, necessitating an annual trip up Capitol Hill to secure its operating costs.

That has contributed to notoriously poor working conditions at liquor stores and staff turnover that exceeds 100 percent annually. Just in case the incredibility of that number escaped you, that means more DABC employees quit their job each year than there are jobs for them to have.

"They're keeping [personnel] for a matter of months, but not a matter of years, in most cases," Rep. Tim Hawkes, R-Centerville—the House's de facto alcohol guy—told his colleagues.

The hoped-for solution, which won approval from both chambers, is to let DABC keep just enough profit to cover its bases and to tie retail pay rates to the median salary of comparable, private-sector jobs.

Liquor store employees must be at least 21, Hawkes explained, and competitive, "market-based" salaries are needed to keep adults in those positions.

"We need someone who is older," Hawkes said. "That just puts real pressure on finding someone willing to do the job at those rates."

Asked what the new hourly pay rate would be, Hawkes gave what sure sounds like an argument in favor of increasing the minimum wage, if it had come out of the mouth of anyone other than a Utah Republican.

"My guess is currently—and I'm just spitballing here to be honest—it's probably about \$15 an hour," Hawkes said.

Utah Democrats routinely sponsor minimum-wage legislation that is always dead on arrival. But the DABC bill also comes after a less-publicized review of state employees that found many at entry-level salaries work multiple jobs or rely on welfare.

Nationally, more than half of those who work minimum-wage jobs are over the age of 24, according to the U.S. Bureau of Labor Statistics. Two-thirds are women.

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### **That's a Wrap**

Twitter users divulge their highlights of the 2021 session

**Benjamin Wood:** *Hey friends, I'm putting together a post-session wrap up and would love some suggestions for under-the-radar legislation (or floor moments) that may not have gotten the attention they deserved.*

3 bills passed that will reduce burdensome reports required of LEAs HB42, HB134 & HB300 by @PulsipherSusan. An audit showed there are between 300 & 400 required reports (that no one does). Audit found that no one knows the cost of said reports. Let's put the \$ back in the classroom

—**Kim Frank @UTCharterChat**

@VoteSuz's bill on diesel vehicles needing emissions testing?

—**@WanderingDave**

Reagan [Outdoor Advertising] loses, twice.

—**@TaylorWAnderson**

HB113 (should always have been this way for fairness, equality); Floor discussion of HB102; Passage of HB219 (ending predatory phone rates at county jails w/sheriffs in agreement)

—**Rep. Cheryl Acton, R-West Jordan @VoteCherylActon**

Medicaid budget shenanigans

—**@stacyKstanford**

SB214 officially allows Utah govt documents to be published in languages other than English. This is *huge*. Nearly 1 in 6 Utahns speak a language other than English at home. It was a huge obstacle at the start of the pandemic.

—**@KPkelsey**

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