

MINUTES OF THE JOINT EXECUTIVE APPROPRIATIONS COMMITTEE
October 16, 2007 at 1:00 p.m.
Room W135, House Building, State Capitol Complex

Members Present: Sen. Lyle Hillyard, Co-Chair
Rep. Ron Bigelow, Co-Chair
Sen. Peter Knudson, Vice Chair
Rep. Rebecca Lockhart, Vice Chair
Pres. John Valentine
Sen. Curtis Bramble
Sen. Gene Davis
Sen. Mike Dmitrich
Sen. Patricia Jones
Sen. Sheldon Killpack
Pres. John Valentine
Rep. Ralph Becker
Rep. David Clark
Rep. Brad King
Rep. David Litvak
Rep. Carol Spackman Moss
Rep. Gordon Snow

Members Excused: Sen. Eastman
Sen. Ed. Mayne
Speaker Greg Curtis

Staff Present: Jonathan Ball, Director, LFA
Steven Allred, Deputy Director, LFA
Greta Rodebush, Legislative Secretary, LFA

Speakers Present: Tenielle Young, Governor's Office of Planning and Budget
Dr. Thomas Young, LFA
Dr. Andrea Wilko, LFA
Stan Eckersley, LFA
Debbie Headden, LFA
Gary Syphus, LFA
Ted McAleer, USTAR
A. Loris Betz, M.D., Ph.D., University of Utah

A list of visitors and a copy of handouts are filed with the committee minutes.

1. Call to Order - Approval of Minutes

Committee Co-Chair Bigelow called the meeting to order at 1:07 p.m.

A motion was not taken on the minutes for September 18, 2007 at this time.

2. Federal Funds Report

Tenielle Young, Governor's Office of Planning and Budget, presented the Federal Funds Report for the period September 1, 2007 through September 30, 2007. She briefly explained three new grants requiring legislative action: Utah Department of Public Safety - Public Safety Interoperable Communications; Utah Department of Corrections - Adam Walsh Act Implementation; and Utah Department of Natural Resources - National Green Infrastructure Workshop. In addition to the three new grants, there were three reapplications of existing grants requiring legislative action Ms. Young also noted that three new grants and three reapplications of existing grants have been approved by the Governor's Office.

Rep. Bigelow inquired about the status on a number of grant applications. In reference to an application approved by the Governor's Office - Department of Natural Resources - iTree Training - federal annual award, \$20,000 and Local/other match, \$20,000, Rep. Bigelow asked why there is 0 percent of share going to the local agencies. Ms. Young explained that these funds will not be allocated directly to local government but will be used by the Department of Natural Resources to train city employees to use a computer program that will tracks city trees and their environmental benefits. Ms. Young added that she will check the percentage to see if it is correct.

Rep. Bigelow also inquired if the reapplication approved by the Governor's Office - Department of Health - Adult Viral Hepatitis Prevention Coordinator - federal annual award, \$150,000, funds an existing staff member. Shari Watkins, Finance Director, Department of Health, confirmed that it does.

In regards to grants tracked by the Governor's Office as of September 30, 2007, Rep. Bigelow observed that Community and Culture - NEA Partnership Agreement - federal annual award, \$690,400, was listed twice as Item No. 50 and 54, once for FY 2008, and once for FY 2009. He wanted to know if grants have to be addressed two years in advance. Ms. Young did have the answer to this question but offered to follow up on his inquiry.

Finally, for Item No. 59, the Department of Education - Utah's Per Pupil Charter School Facilities - federal annual award, \$2,785,653 and state annual match, \$594,848, with 95 percent share going to local agencies, Rep. Bigelow asked what the other 5 percent is used for. Ms. Young did not have this information but indicated that she would get back to Rep. Bigelow on this matter.

Co-Chair Bigelow called for a motion on the minutes and the Federal Funds Report.

MOTION: Co-Chair Hillyard moved to approve the minutes for September 18, 2007. The motion passed unanimously with Sen. Davis, Sen. Dmitrich, Rep. Becker, and Rep. Litvak absent for the vote.

MOTION: Co-Chair Hillyard moved to approve three new grants and three reapplications of existing grants requiring legislative action listed in the Federal Funds Report for the period September 1, 2007 through September 30, 2007. The motion passed unanimously with Sen. Davis, Sen. Dmitrich, Rep. Becker, and Rep. Litvak absent for the vote.

3. Revenue Update

Dr. Andrea Wilko, LFA, and Dr. Thomas Young, LFA, presented Revenue Update publication Volume 1, Issue 2, October 16, 2007. Dr. Wilko presented an overview of tax collections noting that economic indicators and revenue collections are higher than the February 2007 estimates. Based on one quarter of tax collections, General Fund and Education Fund revenues are expected to exceed targets for FY 2008 by \$246 to \$406 million. Major growth areas include: population, income and employment, and non-residential construction.

By comparison, the General Fund/Education Fund surplus in FY 2007 was \$241,872,000 (no budget reserve transfers) while the General Fund/Education Fund surplus in FY 2006 was \$308,428,400 (after a \$78,500,000 budget reserve transfer). Most of the 2007 surplus came in the income tax, sales tax, and investment income areas.

Dr. Young presented the update for General Fund and Transportation Fund revenues:

- *Sales and use tax - retail sales, business investment, and services, are above trend. Retail sales are projected to slow in coming years from a growth rate of 7.3 percent to an annual growth rate of 3.7 percent for calendar year 2008.*
- *Investment income is expected to slow in FY 2008 due mainly to lower balances and a slight decline in expected returns on those funds.*
- *Metal severance tax revenue will likely drop slightly due to moderating copper and gold prices and flat production growth. Coal is also expected to experience slow to slightly negative growth in terms of revenue. Oil and gas severance revenue is expected to increase as both price and production increase.*
- *Net transportation fund revenues for FY 2008 are expected to be \$17.3 million to \$27.9 million over the February target. Commercial demand for fuels used in shipping, carriers, trucking, and airlines has contributed to the overall increase in Transportation Fund revenue.*

Dr. Wilko presented the update on Education Fund revenues:

- *Individual income tax is anticipated to grow between 5 and 6 percent in FY 2008 due to wage gains, capital gains, and dividend earnings.*

- *Corporate profitability continues to remain solid due to a strong business climate, including demand for commodities and chemicals, and strong manufacturing, transportation, and technology sectors.*
- *It is estimated that structural changes to Utah's Education Fund revenue that included the income tax reform and the renewable energy credit, will decrease the Education Fund growth by approximately \$28 million in FY 2008. Additional impacts from tax reform will occur in FY 2009.*

Dr. Wilko and Dr. Young highlighted key economic indicators driving Utah's economy: wages and employment, financial markets, consumer sentiment, inflation, retail and construction:

- *Utah has experienced strong employment and wage growth well above the national average. The growth rate of employment is expected to slow to 3.5 percent; however, coupled with average wage growth of 4.6 percent, total wage growth should be above 8 percent for 2008.*
- *The strongest employment sectors continue to be in construction, professional and business services, and mining.*
- *Competition for workers has driven up wages in the last couple of years. Strong immigration has helped employers meet the need for workers in all categories.*
- *National consumer sentiment is slightly below a three-year moving average consistent with slower economic growth. It is expected that consumer sentiment will stay at that level over the near term.*
- *Growth in equities and dividends is expected to stay at its current level.*
- *Inflation, as measured by Consumer Price Index (CPI), is expected to stay around 2 percent with upward price level pressure from energy, food, and health care.*
- *Retail sales for Utah are expected to be 3.7 percent for FY 2008, somewhat lower than the recent strong growth in Utah's retail sales sector, but well above the national forecast of 2.9 percent.*
- *The area that is having the strongest impact on revenue is the downturn in the residential construction sector; however, this is being offset somewhat by increases in non-residential construction.*

Overall, Dr. Wilko concluded that although revenues are doing well in FY 2007 and FY 2008, growth is expected in FY 2009 but at a slower rate.

Co-Chair Bigelow commented that even though revenue projections are positive, it would be wise to exercise some caution in spending those revenues.

Sen. Hillyard asked about the spending limit and the impact that it will have on these revenues. Mr. Ball explained that the spending limit will be forthcoming, pending inflation and population growth numbers. He pointed out that available revenue will exceed the spending limit. Mr. Ball suggested looking at areas that are not subject to the limit or thinking about returning money to tax payers instead of spending money. Discretionary spending will be governed this year by the spending limit and not available revenue.

4. Accountability for Previous Session Fiscal Note Bills and Building Block Appropriations

Stan Eckersley, LFA, presented the "Fiscal Note Follow-up and Accountability Report - October, 2007." The report consisted of an executive summary sheet with finding summaries for high profile bills. The finding summaries included "traffic signal" indicators on the implementation plan, variance of agency's original estimate vs actual costs, and variance of fiscal note vs. the actual costs. Mr. Eckersley stated that some bills will require more in depth study; as such, a "Fiscal Note Follow-up Issue Brief" will be prepared and presented to the respective appropriations subcommittee. Mr. Eckersley asked for some suggestions on the report's content and format.

Sen. Hillyard asked about the red "traffic signal" indicator on "Implementation status" for HB 148 - Education Vouchers. Jonathan Ball, LFA, explained that time lines set forth in this bill have passed without action due to a citizens referendum. He called attention to the yellow "traffic signal" indicator for "Accuracy of Agency Fiscal Estimate" and "Accuracy Final Fiscal Note." Since implementation has been delayed until the 2008-2009, the fiscal impact of the program may change to reflect changes in enrollment growth, price inflation, family income levels, etc.

Sen. Hillyard asked if the fiscal notes could be tracked for two years to include the 2006 and 2007 General Sessions. Mr. Ball said that LFA intends to collect two years worth of data on current bills; however, going back a year or two at this time would be difficult due to pending budget analyses and session preparation. He said that it could be done. Sen. Hillyard responded that if the fiscal notes could be tracked for 2006 and 2007 without a great deal of effort, to go ahead and proceed; otherwise, he directed LFA to track the current fiscal notes going forward two years.

Sen. Hillyard expressed an interest in having the fiscal analysts meet with the co-chairs of the appropriations subcommittees to identify and evaluate in the same manner three to five items that were funded and report back to Executive Appropriations Committee.

Co-Chair Bigelow entertained a motion from Sen. Hillyard.

MOTION: Sen. Hillyard moved that the Executive Appropriations Committee direct the Office of the Legislative Fiscal Analyst staff assigned to each of the nine appropriations committees to meet with the Co-Chairs of those subcommittees before the session starts for the purpose of identifying and analyzing three to five items, or as directed by the Executive Appropriations Committee, that were funded within the subcommittee and report back to the Executive Appropriations Committee. The motion passed unanimously with Pres. Valentine, Sen. Dmitrich, and Rep. Becker absent for the vote.

Sen. Hillyard expressed his appreciation for the Fiscal Note Follow-up Report.

Rep. Moss asked if the referendum passes, and H.B. 148 - Education Vouchers is implemented next fall, will increases in the Weighted Pupil Unit (WPU) apply to the voucher bill for the first year that it is implemented. Mr. Ball explained that it was his understanding that in the first year of implementation the voucher amount is set at certain amounts based on income levels. Legislators would have to amend the amount in the bill upward to match the increase in the WPU for the first year. After that, the amount would grow at the same rate as the WPU.

Rep. Litvak asked if it would be possible to identify bills that have the potential of generating some unanticipated costs. Mr. Eckersley clarified that the fiscal analysts are directed to look at any bill that may be controversial or cause some dispute, whether it has a fiscal impact or not.

Co-Chair Bigelow pointed out that if there is no fiscal impact on a bill, perhaps Executive Appropriations Committee may not be the proper venue but may be a Legislative Management Committee issue. Mr. Ball explained that this is a living document and that it will grow and expand as new issues arise.

Rep. Clark expressed his appreciation for the report, in particular, its format and supporting documentation. The report will have a positive impact on the accountability of LFA and the agencies they work with as well.

Co-Chair Bigelow requested for more specificity on expenditures when the implementation status of a bill indicates that costs have increased beyond what was originally estimated. He used the the example of H.B. 93 - Capital Offenses Amendments. He also felt it important to understand the impacts on a program when adjustments are made for appropriations that were less than requested or one-time instead of on-going. He used the example of S.B. 46 - Health Care Amendments.

Rep. Clark suggested that an additional column be added to the report that would characterize the impact on desired program results. Mr. Eckersley felt that this was a reasonable request and that this information could fit into the implementation status window without adding an additional column.

Co-Chair Bigelow informed the committee that the Co-Chairs of the appropriations subcommittees will be invited to the December 11, 2007 Executive Appropriations Committee meeting to give a report on their subcommittee interim meetings and the direction they are headed for the next session.

5. Study of Local and Private Provider Contract Rates

Gary Syphus and Debbie Headden, LFA, presented the findings of the Study of Local and Private Provider Contract Rates in response to assertions made by contract providers regarding their reimbursement rates. The purpose of the study was to determine: 1) if social services contract reimbursement rates are adequate to support contracted services; (2) if the methodology for calculating the cost of living adjustments for local and private providers should be changed; (3) if providers are experiencing a high employee turnover rate; and (4) if providers are accepting more out of state clients and turning away state contract clients.

Of the 566 contracts analyzed from the Divisions of Child and Family Services (DCFS), Juvenile Justice Services (DJJS), and Services for People with Disabilities (DSPD), only 22 responses (3 percent) were useable. Ms. Headden pointed out that staff submitted a provider survey in two different formats and met with the Youth Provider Association and the Utah Association of Community Services to acquire additional information. Contractors indicated concern with confidentiality of their data and/or did not have records to substantiate specific data requests.

Even though the limited number of responses did not allow the analysts to make generalizations about all contract providers, the report does include a review of the data that was received.

Findings show that because of increases in fixed costs such as liability and health insurance, utilities, and transportation, contractors have had an issue with salary compression. These operating expenses are increasing at a greater rate than wages and despite legislative COLA increases, the COLA increases have not kept up with wage increases. Without comprehensive data, the analyst can only assume that because the contractors continue to accept the terms of the contract, the reimbursement rates are adequate to cover the costs of services provided.

The methodology for calculating the cost of living adjustments is based on the compensation component of the contractor's total budget. The Analyst received no evidence from the 22 respondents that supports making a change; therefore, consistent with the Budgetary Procedures Act (UCA 63-38), the Analyst recommends the current methodology remain in place.

As far as experiencing a high turnover rate, the 22 respondents show that in FY 2006, 726 staff left their employ for various reasons, the three largest being change in position, higher wages, or termination. Many of the providers do not capture this data because the employees often leave without giving an explanation. Because of the small sample size, an adequate conclusion on employee turnover cannot be drawn from this information.

On the question of accepting more out-of-state clients and turning away state contract clients, a request to the Department of Human Services shows that 8 out of 455 (DCFS, DJJS, and DJJS) contractors have refused to renew their contracts because the rates are too low. Two other contractors are limiting the state clients they will accept because the reimbursement rate for out-of-state or private clients are higher.

In conclusion, contract providers were unwilling or unable to submit data upon which the analysts could make a recommendation for change. The analyst recommends that the Youth Provider Association and the Utah Association of Community Services collect the necessary data for contract providers annually and submit the information as part of any requests for increased contract funding.

Rep. Moss asked for the total number of employees for the 22 responding providers that indicated 726 staff left their employ in FY 2006. Ms. Headden responded that this data was not provided but offered to get this information.

Mr. Ball commented that repeated attempts had been made to acquire data from the local and private contract providers that would substantiate their assertions. He suggested that the anecdotal evidence, the maximum allowable rates (MARS) vs the reimbursement rates, might give you a sense of what the gap is between what is being funded and what the actual costs are. However, at this point in time, they do not have real expenditure data to work with.

Rep. Clark addressed the contractors about their limited responses to the analysts requests.

Rep. Litvak asked about the recommendation to continue using the current methodology for calculating COLAs. Ms. Headden explained that because there was a lack of evidence to support changing the methodology for cost of comprehensive living adjustments, it was decided to continue with the status quo.

6. USTAR

Ted McAleer, Executive Director, USTAR Governing Authority, presented the annual report outlining the first year progress of USTAR program.

Mr. McAleer reviewed three program areas: Research Teams, Science Technology Research Buildings, and the Technology Outreach Innovation Program (TOIP). To date, hires have been made in 8 of the 11 identified innovation areas for a total of 13 faculty and researchers hired.

Mr. McAleer highlighted Guido Gerig, Ph.D., a highly esteemed leader in the field of Medical Imaging, and other recruits in the areas of fossil energy, genetics and gene-mapping, biofuels, and advance nutrition. Buildings authorized by the Legislature on the Campuses of the University of Utah and Utah State University are in the planning stages with completion planned for 2011. Finally, five "business leaders" have been hired to be Directors of Technology Outreach Centers at Weber State, Salt Lake Community College, Utah Valley State College, Dixie College, and Utah State University-Unitah Basin. Each Director has met with key stakeholders in their region and developed strategic plans for implementing the TOIP program. In addition, they have met with 43 growth and high-growth potential companies.

Dr. A. Lorris Betz, M.D. commented on the achievements of Dr. Mario R. Capecchi, who was awarded the 2007 Nobel Prize in Medicine for his pioneering work in gene targeting. Dr. Capecchi, a distinguished professor of human genetics and biology at the University of Utah's Eccles Institute of Human Genetics, developed a technique that alters genes in mouse embryonic stem cells and produces mouse offspring with genetic alterations. Scientists can then study the mice and research how genes cause or contribute to diseases. It is anticipated that this will aid in the development of drugs that will treat specific diseases.

Dr. Betz remarked that Dr. Capecchi has repeatedly expressed his sentiments about the favorable research environment he has found in Utah which has allowed him to think big without the demands of producing an immediate product. Dr. Capecchi is also impressed with the amount of collaboration that exists within a smaller university setting such as the University of Utah. Dr. Betz concluded his remarks by emphasizing that it is this type of environment that is fundamental to the USTAR program.

Dr. Betz showed a brief biographical clip that was viewed on the ABC nightly news.

Co-Chair Bigelow commented that he expects the Legislature to recognize Dr. Capecchi's achievements at the next General Session.

Sen. Jones asked what the Legislature could do to help sustain this effort. Mr. McAleer responded that several companies had approached USTAR as a result of referrals from Legislators. He welcomes this kind of support. Mr. McAleer also pointed out that at the October, 2005 Executive Appropriations Committee Meeting, the original USTAR economic prospectus included a request for \$25 million a year in innovation funding. The program was funded at \$15 million a year. He believes USTAR has produced a good return on this investment and that additional funding would enable USTAR to expand into other areas of innovation. Lastly, he remarked that marketing efforts and the Virtual Innovation Network will help increase the public's awareness of the USTAR Initiative.

Sen. Jones asked how Utah's success compares with programs in other states. Mr. McAleer stated that he had not done a lot of comparisons lately. He and three team members will be attending the Conference of State Science Technology Innovators in Baltimore, Maryland where

they will re-identify those states they want to benchmark and compare their results to. They should have more competitive comparisons within the next 90 days.

Sen. Knudson expressed his appreciation for Mr. McAleer's and Dr. Betz's presentations.

Rep. Clark added that the USTAR Initiative has been exemplary in putting into action the concepts of education to innovation to commercialization.

7. Other Business

Rep. Clark informed the committee that during the 2007 General Session, the Legislature appropriated \$174,000 one-time General Funds for the Medicaid Adult Vision Program.

Rep. Clark explained that it was the intent of the Legislature that the Department of Health apply for a federal fee waiver to allow a co-pay for adult vision care of \$10 rather than the allowable rate of \$3. The Centers for Medicare and Medicaid Services (CMS) did not allow the waiver; therefore, a solution on how to handle this appropriation will need to be address early on in the next session.

Pres. Valentine noted that in order to effectuate the use of those funds, statute can only be changed in a legislative session. He did point out that it was the intent of the majority party in the House and the Senate to authorize the use of those funds in the second half of the fiscal year.

Co-Chair Bigelow clarified that a committee can not override the actions of the Legislature. By law, the Legislature can only pass laws or appropriate money while in session.

Co-Chair Bigelow continued with other business. For informational purposes, additional reports required by statute were provided under TAB 7: (1) Utah Financial Highlights, Fiscal Year Ended June 30, 2007 issued by the Department of Administrative Services, Division of Finance; (2) HB 107, "Funding for Prosecution and Prevention of Child Pornography Offenses"; and (3) H.B. 150, Item 134, UEN Intent Language. Questions regarding these reports can be addressed at a future date.

Co-Chair Bigelow entertained a motion from Co-Chair Hillyard.

MOTION: Co-Chair Hillyard moved to adjourn. The motion passed unanimously.

Co-Chair Bigelow adjourned the meeting at 2:50 pm.