

**MINUTES OF THE
EXECUTIVE APPROPRIATIONS COMMITTEE**
Tuesday, August, 14, 2012 - 1:00 p.m. - Room 445 State Capitol

Members Present:

Sen. Lyle W. Hillyard, Co-Chair
Rep. Melvin R. Brown, Co-Chair
Sen. Kevin T. Van Tassell, Vice Chair
Rep. John Dougall, Vice Chair
Sen. Scott K. Jenkins
Sen. Patricia W. Jones
Sen. Peter C. Knudson
Sen. Ben McAdams
Sen. Karen W. Morgan
Sen. Wayne L. Niederhauser
Sen. Ross I. Romero
President Michael G. Waddoups
Rep. Brad L. Dee

Rep. Gregory H. Hughes
Rep. Brian King
Speaker Rebecca D. Lockhart
Rep. Jennifer M. Seelig
Rep. Christine Watkins

Members Excused:

Rep. David Litvack
Rep. Ronda Rudd Menlove

Staff Present:

Mr. Jonathan Ball, Legislative Fiscal Analyst
Mr. Steven Allred, Deputy Director
Ms. Greta Rodebush, Legislative Secretary

Note: A copy of related materials and an audio recording of the meeting can be found at www.leg.utah.gov.

1. Call to Order/Approval of Minutes

Co-Chair Hillyard called the meeting to order at 1:35 p.m. Rep. Litvack and Rep. Menlove were excused from the meeting.

MOTION: Rep. Brown moved to approve the minutes of June 19, 2012. The motion passed unanimously. Sen. Jenkins and Sen. McAdams were absent for the vote.

2. Federal/Non-federal Grants

Jill Flygare, Governor's Office of Planning and Budget (GOPB), presented the Federal/Non-federal Grants Report dated August 14, 2012. There were three new federal grants and one non-federal reapplication of an existing grant requiring legislative action. The Governor's Office approved nine new federal grants and two reapplications/continuations of existing grants. The Governor's Office also approved two new non-federal grants.

President Waddoups asked about the review process for grants with local agency match requirements. Ms. Flygare explained that if the local/other match requirement exceeds \$1 million or has FTE, the Executive Appropriations Committee (EAC) must review the grant. If the grant is less than \$1 million, it is considered a low impact grant and will require the approval of the Governor's Office. President Waddoups asked if county commissioners or city councils are involved in the approval process. Ms. Flygare stated that she would check with the municipalities and report back to him.

Mr. Ball stated that Utah's grant review process was widely discussed at last week's NCSL's Legislative Summit. He commented that a number of states are not reviewing grants at the state level, let alone at the local level. Based upon the responses of other states, Mr. Ball did not think that local legislative bodies were reviewing grants in much detail. He indicated that with the prospect for sequestration on January 1, 2013, states are scrambling to get more detail on what their funding exposure is so they can make some contingency plans.

MOTION: Rep. Brown moved to recommend acceptance of the federal and non-federal grants as outlined on page 1 of the handout entitled, "Federal/Non-Federal Grants Review and Approval" under the heading, "Grants Requiring EAC Review and Recommendation" and dated today, August 14, 2012. The motion passed with Rep. Dougall voting in opposition. Sen. Jenkins and Sen. McAdams were absent for the vote.

3. Performance Notes Implementation

Mr. Stan Eckersley, Fiscal Analyst, LFA, presented the Issue Brief, "Performance Note Follow-up Report."

Mr. Eckersley explained that legislative rule requires that legislation creating any new program or significantly expanding an existing program have a performance note. During the 2012 General Session, there were twenty three bills that required performance notes. State agencies submitted performance notes on seventeen of those bills, and one sponsor wrote his own performance note.

Integral to this process is the role that the Office of the Legislative Auditor General (OLAG) plays in the post-session evaluation. Ms. Leslie Marks, Legislative Lead Auditor, OLAG, reported on the status of the performance notes for the 2012 General Session. There were five bills that passed without their required performance note. As such, OLAG contacted the agencies with oversight responsibility for the newly created programs and informed them that they had 30 days to submit the required performance notes. Agency administrators have subsequently submitted the performance notes. Ms. Marks stated that OLAG is currently reviewing the performance notes and will forward copies of the notes to the bill sponsors in both houses as well as legislative leadership. OLAG's best practices process will go into effect for all new programs.

Mr. Eckersley highlighted the report findings and recommendations. The Analyst recommends:

- 1) Changing the requirement that performance notes be attached to the bill to a requirement that performance notes be printed with the legislation;
- 2) Moving the required notation from the bill to the fiscal note;
- 3) Asking the Analyst to do a look-back report on performance notes in the 2014 interim;
- 4) Inviting the Analyst to present a refresher on performance notes in an early session caucus;
- 5) Directing the Analyst to expand the daily "Fiscal Note Status Report" to include performance notes and expand distribution to all legislators.

Mr. Ron. Bigelow, Director, GOPB, stated that the Governor's Office fully supports the performance note concept. However, in a letter to the Committee dated August 14, 2012, Mr. Bigelow points out that state agencies do not have adequate time for a thorough and complete analysis prior to the due date. Therefore, the Governor's Office recommended that the GOPB work with state agencies after the session to provide a revised and improved performance note for the Committee's review during the May EAC meeting. Mr. Bigelow also indicated that if the EAC agrees with the revised performance note, the Governor's Office would then implement the performance note prior to the start of the new program.

Rep. King asked what constitutes a significant expansion to an existing program. Mr. Eckersley explained that by office practice, increasing costs by \$10,000 constitutes a program expansion, but making that determination can be somewhat subjective and depends on the size of the program. He stated that the fiscal analysts have the expertise to make those determinations. Rep. King asked if the analysts are insulated from outside pressures in making those decisions. Mr. Eckersley said that the analysts are insulated because of the quick turn-around time.

Sen. Niederhauser spoke in support of the performance note process. Taking the time to review bills and having some accountability is essential, especially when it comes to expanding new programs and appropriating new money. Sen. Niederhauser stated that it would be important to educate our colleagues on how the performance note process works.

Mr. Darin Underwood, Audit Manager, OLAG, clarified OLAG's role in the performance note process and discussed how its best practices dovetails with that process. He also expressed his support for GOPB's request for additional time to refine a performance note.

MOTION: Rep. Brown moved to ask staff to open a bill file for possible amendments to performance note rules, and ask staff to work with Senator Niederhauser and the EAC co-chairs in drafting the amendments. The motion passed unanimously with Speaker Lockhart absent for the vote.

4. Fiscal Notes/Building Blocks Follow-up

Mr. Eckersley presented the Issue Brief, "Fiscal Note and Budget Item Follow-Up Report."

The report follows-up on select fiscal notes and budget actions from the 2010, the 2011, and the 2012 legislative General Sessions. During the interim, the fiscal analysts review fiscal notes on a weekly basis and evaluate for implementation status, budget accuracy, and performance measures. The report is organized by Appropriations Subcommittee, year, and type of follow-up item, and includes an index of bills and budget items.

Mr. Eckersley highlighted fiscal note follow-ups on four bills and one building block from the 2011 General Session.

Sen. Niederhauser asked how a fiscal note is selected for inclusion in the report. Mr. Eckersley commented that as a general rule, a fiscal note needs more than one year of implementation before it undergoes review. The fiscal analysts with expertise in a specific budget area will then review one fiscal note per week and determine if the note should go into the report.

Sen. Niederhauser wanted to know if legislators could request follow-up on a specific bill. Mr. Eckersley confirmed that this would be possible.

Co-Chair Hillyard commented that the report was very informative.

5. Internal Service Fund Oversight

Mr. Ivan Djambov, Fiscal Analyst, LFA, presented the Issue Brief, "Internal Service Funds Oversight." He was assisted by fiscal analysts, Rich Amon and Gary Ricks.

Internal Service Funds (ISF) are state entities that provide goods or services to other government agencies. The state's seven ISFs are operated by three departments: Department of Technology Services, Department of Human Resource Management, and Department of Administrative Services. Each ISF has a rate committee, which reviews and approves the ISF's budget and rates before they are submitted to the Governor and the Legislature for final approval. An ISF cannot operate without legislative approval of its budget, rates, fees, FTE, and capital outlays.

The Analyst surveyed ISF customer agencies to determine their satisfaction with ISF services. With some exceptions, user agencies seem to be satisfied. User agencies commented that they could see a potential conflict of interest in having the ISF department directors as voting members of the rate committees. To mitigate for this, the Analyst recommended the Legislature consider changing the make-up of each of the three rate committees.

The survey also showed that customer agencies were dissatisfied with DTS' billing and invoices. The Analyst recommended that DTS leadership seek feedback from the user agencies and improve the clarity and accuracy of the invoices to their customers' satisfaction. Mr. Djambov stated that he had discussed the survey results with the current DTS leadership and they are committed to improving their services. Mr. Djambov indicated that he would be willing to conduct a follow-up the survey a year from now.

User agencies also commented that they would like to have the opportunity to approve or contest an invoice before payments are automatically transferred to the ISF. The Analyst also recommended requiring the ISFs and the Division of Finance to change their rules to allow customer agencies a reasonable time frame to review their invoices and the ability to approve or contest them.

Rep. Dougall said that he too had heard lots of complaints about DTS over the years, one of the complaints being that DTS is a monopoly. Agencies have suggested that perhaps DTS should have to bid on jobs. Rep. Dougall wondered if DTS's service would improve if they had to compete with outside providers.

Sen. Knudson stated that as Chairman of the Government Operations Interim Committee, he felt that this report would be of great benefit to that committee.

MOTION: Sen Knudson moved to refer the Internal Service Funds Oversight report and recommendations to the Government Operations Interim Committee for further consideration. The motion passed unanimously.

Co-Chair Hillyard asked if the committee should be concerned about the profit/loss, retained earnings, and working capital findings in red in the table, "Finances for Internal Service Funds - FY 2011 Actual" on page 3. He mentioned the \$23.6 million negative working capital for Fleet - Motor Pool. Mr. Amon stated that Fleet's negative working capital represents the amount of capital assets they have available that are tied up in loans. If those assets needed to be liquidated, Fleet's total value of assets, which equals \$59.2 million, would be more than enough to cover those obligations.

6. PEHP Health Insurance Rate Expectations

Mr. Chet Loftis, Executive Director, Public Employees Health Program (PEHP), reviewed how the state's health insurance premiums will be impacted by the recent Supreme Court case upholding most elements of the Patient Protection and Affordable Care Act (PPACA).

Mr. Loftis discussed the impacts of immediate (or already implemented) provisions and the impacts of future provisions. Immediate provisions include: 1) Coverage to age 26 regardless of marriage and not preexisting exclusions for children; 2) No lifetime or annual dollar limits; 3) Additional patient protections in the appeals process; 4) No cost sharing for preventative care. Mr. Loftis stated that these provisions added approximately 1.75 percent to premiums, or \$4.7 million across the state plan.

Future provisions include: 1) Next year: New summary of benefits and coverage; 2) January 2013: Reduction in an individual's maximum annual Flex contribution from \$7,500 to \$2,500; 3) January 2014: No preexisting exclusions for adults; 4) 2016: Exchange must allow employees of large groups (e.g. the State of Utah) to use the exchange if their employer's plan costs 9.5 percent or more of their household income, and employer pays a \$3,000 penalty; 5) 2018: A "Cadillac Tax" applies to plans valued at \$10,500 for individuals or \$27,500 for families, while PEHP's plans currently cost \$4,877 for individuals and \$13,423 for families.

Co-Chair Hillyard asked if there were any projections on insurance rate increases. Mr. Loftis responded that PEHP expects to request a 3.7 percent premium increase in January. He indicated that the state has held rates down in the last two years in order to draw down reserves. A 3.7 percent increase would continue to draw down reserves while moving forward toward paying for the inflationary trend.

Rep. King felt that it would be equally important to measure the financial benefits of the PPACA mandates, not just the costs. Rep. Dee indicated that an analysis such this would require an 18 to 24 month actuarial study.

Speaker Lockhart wanted to know why the federal government wants to penalize insurance companies that offer a Cadillac Plan when the goal is to provide more health insurance coverage.

7. DABC Restructuring Update

Mr. Sal Petilos, Interim Director, Department of Alcoholic Beverage Control (DABC) reported on actions taken by the DABC to implement statutory changes made in the General Session. He was assisted by Mr. Ben Buys, Director of Finance, DABC.

Mr. Petilos reported on the implementation of S.B. 66, Alcoholic Beverage Control Related Amendments, H.B. 354, Alcoholic Beverage Amendments, and S.B. 258, Underage Drinking Prevention Campaign. He discussed the provisions, sections of code, and actions taken as outlined in "DABC Report to the Executive Appropriations Committee," dated Tuesday, August 14, 2012.

Sen. Hillyard inquired about the status of the questions regarding implementation at the bottom of the handout. Mr. Petilos responded that the first two questions are related and pertain to specific provisions within statute and how policy changes are reflected in Package Agency Contracts.

President Waddoups wanted to know if DABC will be able to take action on some of the provisions before the seven member commission is formalized. Mr. Petilos stated under the advisement of the Attorney General Office, a temporary Compliance, Licensing, and Enforcement Committee was created, which allows the director to make preliminary decisions on DABC matters.

Pres Waddoups asked how often the DABC makes deposits into the Markup Holding Fund.

Mr. Ben Buys, Director of Finance, DABC, responded that the DABC will make a monthly deposit into the Markup Holding Fund for the previous month. For example, deposits for July sales are made in August, up to and including the last day of the month. President Waddoups felt that deposits ought to be made sooner than later and more frequently.

President Waddoups also inquired about recent inventory shortages. Mr. Petilos stated that the DABC had discovered shortages systemwide totaling \$18,000. He clarified that is an annual figure.

8. Fire Suppression and Restoration Costs

Co-Chair Hillyard expressed his appreciation to Mr. Mike Styler and all those who participated in fire fighting efforts this summer.

Mr. Mike Styler, Executive Director, Department of Natural Resources, distributed and discussed the presentation, "2012 Fire Suppression And Restoration Costs."

The department has been working in partnership with local, state, and federal government organizations, as well as with private land owners to not only suppress fires but to also manage the recovery of the burned areas. As of August 2012, there were 1,020 wild fires that burned 422,112 acres. The estimated total suppression cost is \$50 million, and the state portion of the suppression costs is approximately \$16 million.

Mr. Styler indicated that watershed restoration and fuel reduction projects will help reduce the threat of future wildfires and reduce the risk of mud flows, increase forage for livestock and wildlife, and improve water quality and quantity in these areas. Based on current estimates, DNR plans to request supplemental funding as follows: \$13 million for fire suppression, \$5 million for seed, and \$3 million for re-seeding.

Rep. Hughes asked how the cost of fighting fires impacts cities. Mr. Styler stated that there are jurisdictional costs associated with these fires and they are handled differently by cities and counties. DNR has yet to determine what the costs are for those entities. Mr. Styler expressed an interest in discussing how to better mitigate these costs for all entities involved.

Speaker Lockhart asked about the federal government's involvement in fuel reduction and re-seeding projects. Mr. Styler stated that the state works in partnership with the federal government in planting and purchasing seeds.

Mr. Dick Buehler, State Forester, Division of Forestry, Fire and State Lands, stated that the division works very closely with the Forest Service and the BLM to protect life and property on public and private lands, sharing financial and physical resources.

Speaker Lockhart asked if the federal lands are being managed properly. Mr. Buehler indicated that the Forest Service would be able to better manage lands if some of the federal restrictions they operate under were removed.

Co-Chair Hillyard asked if DNR's \$8 million supplemental request for seeds and re-seeding will change much given that the state is only two-thirds through the season. Mr. Buehler pointed out that the funding needs to last until July 1, 2013. The funding request could go up. Hopefully, next year's fire season will not be as dry as this year.

Rep. Dougall wanted to know how this year's fire season compared with last year's. Mr. Styler indicated that last year's fire season was not nearly as dry as this year's. In fact, the state did not need to ask for supplemental funding. Rep. Dougall also asked to what extent the department goes after entities that cause fires. Mr. Buehler stated if investigations can prove negligence or intent, the state and the federal government will actively pursue cost recovery.

9. Other Business

Co-Chair Hillyard reminded committee members to read the written report behind Tab 9. As required by statute, Rocky Mountain Center for Occupational and Environmental Health submitted "Assessment Offset for Donations Promoting Occupational Health and Safety."

MOTION: Rep. Brown moved to adjourn. The motion passed unanimously. Sen. Jones, Sen. McAdams, Sen. Romero, Sen. Van Tassell, President Waddoups, Rep. Dee, and Rep. Seelig were absent for the vote.

Co-Chair Hillyard adjourned the meeting at 3:31p.m.