MINUTES OF THE
EXECUTIVE APPROPRIATIONS COMMITTEE
Tuesday, November 13, 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
Sen. Scott K. Jenkins
Sen. Patricia W. Jones
Sen. Peter C. Knudson
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
Rep. David Litvack
Speaker Rebecca D. Lockhart
Rep. Ronda Rudd Menlove
Rep. Jennifer M. Seelig

Members Excused:
Rep. John Dougall, Vice Chair
Sen. Ben McAdams
Rep. Christine Watkins

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.le.utah.gov.

1. Call to Order/Approval of Minutes

Co-Chair Brown called the meeting to order at 1:10 p.m.

MOTION: Sen. Hillyard moved to approve the minutes of October 16, 2012. The motion passed unanimously with Sen. Knudson, Sen. Romero, Rep. King, Rep. Litvack, and Rep. Seelig absent for the vote.

2. Federal/Non-federal Grants

Ms. Jill Flygare, Governor's Office of Planning and Budget (GOPB), presented the Federal/Non-federal Grants Report dated November 13, 2012. Under federal grants, there was one continuation of an existing grant requiring legislative action for the Department of Health, *Epidemiology and Laboratory Capacity for Infectious Diseases: Program Components*. For the same time period, there were no new grants and no reapplications/continuations or revisions of existing grants approved by the Governor's Office.

Ms. Flygare noted that in the "Grant Follow-up," the Governor's Office had responded to the EAC request for additional information on the federal grant reapplication for the Department of Health, *Comprehensive HIV Prevention Program for Health Departments.*

Under non-federal grants, there were no new grants, reapplications/continuations or revisions of existing grants requiring legislative action or approved by the Governor's Office.

MOTION: Sen. Hillyard moved to approve the continuation of the federal grant for the Department of Health under the heading, "Grants Requiring EAC Review and Recommendation." The motion passed unanimously with Sen. Knudson, Sen. Romero, Rep. King and Rep. Menlove absent for the vote.

3. Draft Performance Notes Resolution

Mr. Stan Eckersley, Fiscal Note Coordinator, LFA, reviewed "Joint Rules Resolution on Performance Notes," which modifies joint Legislative Rules.

The resolution, sponsored by Senator Niederhauser, clarifies that performance notes are published with the legislation, rather than being attached to the legislation; provides that a performance note, like a fiscal note, is not an official part of the legislation; and makes technical and organizational modifications.

Co-Chair Brown stated that the performance note adds clarity to the legislation and provides legislators with information for making decisions on a bill.

MOTION: Sen. Hillyard moved to report the "Joint Rules Resolution on Performance Notes" out favorably as a committee bill. The motion passed unanimously with Sen. Knudson, Sen. Romero, Rep. King, and Rep. Menlove absent for the vote.

4. Update on Impact of Turnover Savings on Compensation Package

Mr. Stephen Jardine, Fiscal Analyst, LFA, explained that on May 15, 2012, legislative staff presented the Issue Brief, "Vacancies, Turnover Savings, and Personnel Cost Changes," to the EAC. The committee voted to approve a substitute motion that amended staff recommendations on how to treat vacant positions when calculating personnel cost changes. The approved recommendations are as follows:

1. *All agencies to include funded vacant positions in their budgeted personnel lists;*
2. *The LFA calculate a historical turnover rate for each agency and apply this calculated rate to all agency personnel lists, including higher education, when calculating personnel cost changes;*
3. *The LFA exempt line items with fewer than 20 full-time equivalent (FTE) employees from recommendation 2.*

Mr. Jardine stated that local school districts and charter schools were excluded from the calculation in recommendation 2. He also reported that the LFA had completed the turnover savings factor calculations in compliance with the EAC May 15 motion. In making the calculations, the LFA used fiscal years 2011 and 2012 and compared revised appropriated to actual expenditures for salary and benefits. The two years were then averaged to determine an agency's turnover savings factor. Mr. Jardine pointed out that in instances where an agency spent more for salary and benefits than was appropriated, a turnover savings factor of zero was entered.

Mr. Jardine briefly discussed the table, "Historical Agency Turnover Savings - Utah," which shows the calculations and the applied turnover savings factor for each agency.

Co-Chair Brown asked how much an average of the applied turnover savings factor deviates from a standard 5 percent turnover savings factor. Mr. Jardine stated that he had not made that calculation but would do so and get back to him.

Mr. Jardine also responded to clarifying questions regarding the table of calculations and the applied turnover savings factor for each agency.

Mr. Ball explained that the turnover savings factor accounts for structural vacancies, which will help minimize the cost increases associated with cost of living adjustments or benefits changes.

5. Significant Factors Driving 2013 General Session Budget Requests

a. PEHP Benefits Rates

Mr. Chet Loftis, Director, PEHP, presented PEHP's updated rate request for FY 2014. John Borg, Chief Actuary, and Dan Anderson, Legal Counsel, PEHP, were available for comment. Mr. Loftis discussed PEHP's base budget, national industry trends, cost reduction efforts, use of reserves, and funding options for FY 2014 through 2016.

Mr. Loftis stated that PEHP's current base budget is $212 million, which is a respectable level considering national trends. PEHP has been able to reduce costs by 20 percent by adding pharmacy deductibles, raising employee contributions from 2 to 10 percent, reducing co-insurance, and improving provider rates and claims in case management systems. In addition, PEHP has had the ability to draw on reserves.

Mr. Loftis reported that rate increases will need to equal 22 percent over the next two years to sustain cost levels and forego the use of reserves.

Mr. Loftis distributed a handout with four rate increase options with and without the Patient Protection and Affordable Care Act (PPACA) reinsurance assessment. He indicated that PEHP needs a minimum rate increase of 5.5 percent in FY 2014.

Mr. Loftis briefly discussed federal reform and the state high risk pool. He explained that in 2014, a reinsurance program will replace the state high risk pool. To pay for this program, the federal government will assess the private market approximately $110 million that includes a state assessment of $9.7 million over the next four years. Mr. Loftis suggested that the state might not be subject to this tax. He referenced the intergovernmental tax immunity doctrine which states that a governmental entity may not tax another governmental entity. He did point out that the state has an interest in supporting the individual market as evidenced by its $8 million appropriation to the state's high risk pool.

Speaker Lockhart ask for further clarification on the funding of the reinsurance program. She commented that the state could potentially apply the $8 million the state pays into the state high risk pool towards the $9.7 million assessment.

Mr. Loftis also discussed the impact of employer penalties, including a $3,000 affordability penalty and a $2,000 play or pay penalty.

Speaker Lockhart asked if the state could make the case that the reinsurance tax does not apply. Mr. Loftis felt that the state could make a reasonable case, starting with the intergovernmental tax immunity doctrine.

Rep. Menlove asked about the basic cost amounts for each of the four rate renewal options.

Mr. Ball clarified that the figures represented in the tables represent not only the General Fund and Education Fund, but all funding sources including federal funds.

b. URS Benefits Rates

Mr. Dan Anderson, Legal Counsel, Utah Retirement Systems (URS), presented the report. He explained how the URS's independent actuarial firm determines retirement rates, reported on actuarial findings suggesting a potential reduction in future liabilities, and discussed cost savings associated with the Tier II program.

Referring to the handout, "Preliminary Tier I Retirement Contribution Rates as a Percentage of Salary and Wages," Mr. Anderson indicated that for FY 2014, the net increase in the contribution rate for state and school employees is 1.7 percent (18.76 percent to 20.46 percent). He noted that the 2009 actuarial study anticipated a 2 percent growth in the contribution rate for about four years. For public safety individuals, the net increase in the contribution rate is 2.02 percent, and for judges, the net increase is 2.79 percent.

Sen. Hillyard wanted to know how much money would need to go into the system to cover increases in health insurance and retirement for public employees and public education. Mr. Ball felt that approximately a 2.7 percent increase would cover both the health insurance and retirement.

c. Growth in Medicaid Enrollment

Mr. Russell Frandsen, Fiscal Analyst, LFA, presented the Issue Brief, "Medicaid Consensus Forecasting." He reported on the consensus cost estimates for Medicaid and the Children's Health Insurance Program (CHIP) for FY 2013 and FY 2014, the forecast components for mandatory costs, why FY 2012 had $27.4 million unspent from the General Fund, and why consensus cost estimates for FY 2013 will be closer than the 5 percent error rate from FY 2012.

The Medicaid consensus forecast team estimates surplus General Fund in FY 2013 of $40.9 million and $1.8 million in FY 2014. For the CHIP, consensus forecast estimates surplus General Fund in FY 2013 of $3.8 million and a cost of $1.5 million in FY 2014. Mr. Frandsen noted that these estimates do not include any funding for state administration or any optional provider inflation.

Mr. Frandsen indicated that the 2011-2012 consensus process helped save the State from appropriating an additional $13 million in General Fund for FY 2012 during the 2012 General Session for medical services in Medicaid.

Mr. Frandsen briefly discussed a summary of consensus General Fund mandatory cost estimates for FY 2013 and FY 2014 that included baseline caseload costs and costs to Medicaid from federal health care reform. He pointed out that due to federal health care reform the estimated baseline surplus of $21.2 million will be reduced by $19.4 million in FY 2014, resulting in a surplus of $1.8 million.
Mr. Frandsen explained that all estimated mandatory costs are included in the consensus forecast for Medicaid this year, including forced provider inflation and changes to the federal participation rate.

FY 2012 ended with $27.4 million in unspent General Fund. He stated that $19.1 million was unexpected, which represents a 5 percent error in the first year of consensus forecasting for Medicaid.

Speaker Lockhart referred back to the $19.4 million cost estimate for federal health care reform for Medicaid in FY 2014. This estimate does not include the cost of Medicaid expansion. If you add the $2.3 million cost estimate for CHIP, the state has a $23 million obligation that it has no choice about.
Mr. Frandsen confirmed that this was the case.

Mr. Frandsen was optimistic that the consensus cost estimate for FY 2013 will be closer than the 5 percent error from FY 2012. Effective January 2013, a majority of Medicaid clients will be served by capitated care contract which means the per member per month costs per client will be a known factor as a contracted monthly rate. In addition, the consensus group will use 12 months of actual expenditures to forecast future costs for clients not served by a capitated care contract.

d. Growth in Public Education Enrollment

Mr. Ben Leishman, Fiscal Analyst, LFA, presented the Issue Brief, "Minimum School Program Enrollment Growth Cost Estimates." He reported on student enrollment growth, consensus enrollment projections, and enrollment growth cost estimates.

As of October 2012, a total of 600,970 students enrolled in Utah's public schools. This represents an increase of 13,225, or 2.3 percent, over fall 2011. Mr. Leishman indicated that student enrollment has slowly increased since fall 2000 and will continue to do so for the next four to five years.

The Common Data Committee (CDC) consensus enrollment projections show an estimated increase of 13,254, or 2.2 percent, in fall 2013 for a total estimated student enrollment of 614,224. Growth in student enrollment results in additional Weighted Pupil Units (WPUs) and additional WPUs increase the cost of the Basic School Program. Projections show that the 614,224 students expected to enroll in Utah schools next fall will generate 802,015 WPUs, an increase of 19,998 WPUs over the 782,017 WPUs funded in the FY 2013 budget.

Mr. Leishman indicated that preliminary estimates show student enrollment growth may cost an additional $75 million in FY 2014 plus an additional $30 million to fund a statutory rate change for the Voted and Board Leeway programs.

Speaker Lockhart asked what is included in the $75 million cost estimate. Mr. Leishman stated that the $75 million cost estimate includes the WPU increases, Charter School Local Replacement and Charter School Administrative costs, Voted and Board Leeway, and Educator Salary Adjustments. The additional $30 million accounts for another component of Voted and Board Leeway.

Speaker Lockhart commented that the estimated costs for FY 2014 are over $100 million without anything new to public education. She ask Mr. Ball what the revenue projections were for FY 2014. Mr. Ball stated that those numbers aren't known yet, but as of last month, the economists are estimating up to $100 million in revenue growth for the current fiscal year (FY 2013).

e. Capital Improvement Funding

Mr. Mark Bleazard, Fiscal Analyst, LFA, presented the Issue Brief, "Capital Improvements and Deferred Maintenance." He briefly discussed the statutory requirement for funding capital improvements, the funding history of capital improvements for the past ten years, and funding considerations for FY 2014.

Mr. Bleazard explained that statute requires the Legislature to fund capital improvements at a level equal to 1.1 percent of the replacement value of existing state buildings before the Legislature may approve new capital development projects. For FY 2006 to FY 2008, the Legislature appropriated more than 1.1 percent of the replacement value of buildings to capital improvements. However, for FY 2009 to FY 2013, the Legislature amended statute to allow funding for capital improvements to drop below 1.1 percent.

Mr. Bleazard reported that for FY 2013, the Legislature appropriated $71.7 million of which $41.7 million is ongoing and $30 million is one-time. The appropriation represents 0.84 percent of the replacement value of buildings in FY 2013. Mr. Bleazard noted that in order to get to the 1.1 percent level in FY 2014, the Legislature will need to appropriate approximately $55 million more to the budget. If the Legislature does not fund capital improvements at the 1.1 percent level, the Legislature may pass a bill to modify statute for FY 2014 or may not fund any capital development in FY 2014.

Sen. Hillyard mentioned that last year, the Legislature appropriated approximately $23 million to help offset $100 million in repairs to infrastructure at the University of Utah. Mr. Bleazard indicated that the University would be approaching the Legislature this year for a revenue bond or a general obligation bond. He stated that the University will need about $80 million to finish the project.

f. Jail Contracting and Jail Reimbursement

Mr. Gary Syphus, Fiscal Analyst, LFA, presented the Issue Brief, "Jail Contracting/Jail Reimbursement & Funding Formula." He explained the difference between Jail Contracting and Jail Reimbursement, how the "final state daily incarceration rate" is determined, and funding considerations for FY 2014.

The Jail Contracting program allows the Department of Corrections (DOC) to contract with county jails to house state inmates. The Jail Reimbursement program is for probationers that violate a condition of their probation and return to a county jail on a judge's order.

The daily amount paid to counties for each of these programs is largely determined by the "final state daily incarceration rate". This "final" rate is set annually by the Legislature, taking into account the daily cost of housing an inmate in a state facility. For FY 2012, the three-year average was $77.94. For the current fiscal year, the Legislature set the "final rate" at $64.18 of which a percentage is paid out for both jail programs. The Jail Contracting program pays out 73 percent of this "final rate" or $46.85 to county jails per bed per day, and the Jail Reimbursement program pays out 50 percent or $32.09 per bed per day.

Mr. Syphus referred to the Total Bed Days (Appropriation/Rate) tables that show the rate comparisons and appropriation levels for both programs.

For FY 2014, the base appropriation for Jail Contracting is $26,232,800 million. At the $64.18 rate, about 1,522 beds per day can be funded. Assuming the DOC needs an estimated 160 additional beds, there will be an additional cost of $2,756,000 ongoing from the General Fund.

The FY 2014 base appropriation for Jail Reimbursement is $11 million, which will fund about 939 beds. The Utah Commission on Criminal and Juvenile Justice (CCJJ) estimates that 1,105 beds are needed for FY 2014, which would cost an additional $1,944,300 ongoing from the General Fund.

Mr. Syphus noted that the cost to the state for these programs may be higher or lower depending on where the Legislature sets the rate.

Rep. Brown wanted to know how many inmates are housed outside the state system. Mr. Syphus stated that 20 percent of the inmates are housed in county jails.

Sen. Van Tassell inquired about the remaining capacity in the main facilities of the prison system.

Mr. Mike Haddon, Utah Department of Corrections, stated that there are 7,000 beds in the prison system and 96.5 percent of the beds are currently full. Where those beds are located varies from facility to facility and jail to jail. Mr. Haddon stated that there are 1,594 funded beds in the county jails and the department tries to keep those beds at full capacity. He noted that there is some excess capacity in the jails that could be funded given that there are no other prison facilities under construction.

g. Jury, Witness, and Interpreter Funding

Mr. Syphus explained that the Juror/Witness/Interpreter Line Item pays for jurors and witnesses who appear in court as well as court interpreter expenses. In recent years this line item has run a deficit, due in part to higher interpreter costs. Subsequently, the Legislature has appropriated funds to keep this line item solvent.

Mr. Syphus indicated that for FY 2012, the deficit was $114,700. He noted that any shortfall is referred to the Board of Examiners to be certified as a claim against the state and will show as a negative carry-forward amount until the Legislature takes action to resolve the deficit.

Mr. Ball commented that the aforementioned 2013 General Session budget requests do not include other requests that come through the normal budget process or the $25 million structural imbalance from the public education miscalculation. Including the structural imbalance, they sum to about $284 million.

6. Proposed Reorganization of Appropriations Acts

Mr. Ball explained that in order to resolve budget reporting differences, the Legislative Fiscal Analyst Office, the Governor's Office of Planning and Budget, and the Division of Finance have agreed upon a common set of reporting criteria that the three offices will use in presenting certain budget reports. He indicated that these guidelines should be useful to everyone and will improve transparency across reports.

Mr. Ball explained the rationale in reorganizing the appropriations acts according to fund types. The proposed appropriations act format would include subsections for (a) Operating and Capital Budget; (b) Transfers to Expendable Funds and Accounts; (c) Business Like Activities; (d) Transfers to and among Restricted Funds/Accounts; (e) Transfers to Free Revenue; and (f) Fiduciary Funds.

Mr. Ball called attention to the before and after roll-up tables that reflect budgetary moves from one category to another along with footnotes explaining those moves.

Speaker Lockhart asked if the LFA will be preparing the nine base budget bills. Mr. Ball confirmed that there will be nine base budget bills that will be organized according to the aforementioned subsections. In addition, the LFA will produce indexes to make it easier for individuals to look up specific programs.

MOTION: Sen. Hillyard moved to direct the Legislative Fiscal Analyst Office to modify the Appropriations Acts to reflect the new reporting format. The motion passed unanimously.

7. Report on Funds Expended on Services to Low Income Individuals

Mr. Bleazard presented the Issue Brief, "Financial Assistance or Services to Low-Income Individuals & Families." The report satisfies UCA 36-12-13 that requires the Legislative Fiscal Analyst's Office to submit an annual report to the EAC on funds expended by the state to provide financial assistance or services to low-income individuals and families.

Mr. Bleazard pointed out that because statute does not define what constitutes “low-income,” the Analyst identified areas of state government that assist individuals and families that are low-income as defined by individual programs. The definition of low-income, however, was not necessarily the same in all cases.

In FY 2012, the State provided $3,496,762,100 ($3.5 billion) for low-income individuals and families. The General Fund and Education Fund portion of the total $3.5 billion was $561 million, and the Federal Funds portion was $2.5 billion.

8. Other Business/Adjourn

Co-Chair Brown noted that Rep. Dougall and Rep. Watkins had asked to be excused from today’s meeting.

MOTION: Sen. Hillyard moved to adjourn. The motion passed unanimously.

Co-Chair Brown adjourned the meeting at 2:45 p.m.