

**MINUTES OF THE JOINT EXECUTIVE APPROPRIATIONS COMMITTEE**  
**April 17, 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. Gene Davis  
Sen. Mike Dmitrich  
Sen. Dan Eastman  
Sen. Patricia Jones  
Sen. Sheldon Killpack  
Sen. Ed Mayne  
Pres. John Valentine  
Rep. Ralph Becker  
Rep. David Clark  
Speaker Greg Curtis  
Rep. Brad Dee  
Rep. Brad King  
Rep. David Litvak  
Rep. Carol Spackman Moss  
Rep. Gordon Snow

Sen. Peter Knudson, Vice Chair  
Rep. Becky Lockhart, Vice Chair

Members Excused: Sen. Curtis Bramble

Staff Present: John Massey, Legislative Fiscal Analyst  
Greta Rodebush, Legislative Secretary

Speakers Present: Tenielle Young, Governor's Office of Planning and Budget  
Jeff Jensen, PEHP  
John Massey, LFA  
Patty Harrington, State Superintendent of Public Instruction, Utah  
State Board of Education  
Patrick Ogden, Associate Superintendent, USOE  
Steve Peterson, Utah State School Boards Association  
Mark Ward, Department of Human Services  
Carlos Bracerros, UDOT

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 Hillyard called the meeting to order at 1:18 p.m.

**MOTION:** Co-Chair Bigelow moved to approve the minutes of February 22, 2007. The motion passed unanimously with Sen. Dmitrich and Sen. Mayne absent for the vote.

## **2. Federal Funds Report**

Tenielle Young, Governor's Office of Planning and Budget, presented the Federal Funds Report for the period December 1, 2006 through March 31, 2007. She briefly explained three new grants requiring legislative action. She pointed out that a fourth grant, Utah Department of Environmental Quality: Utah Clean School Bus Retrofit, had been denied at the federal level. In addition to new grants, there were two reapplications of existing grants requiring legislative action. Ms. Young also noted that four new grants and four reapplications for existing grants had been approved by the Governor's Office.

**MOTION:** Co-Chair Bigelow moved to approve three new grants and two reapplications of existing grants requiring legislative action as found in the Federal Funds Report for the period December 1, 2006 through March 31, 2007. The motion passed unanimously with Sen. Dmitrich and Sen. Mayne absent for the vote.

## **3. Report from PEHP on potential plan change**

(Handout: PEHP Pharmacy Benefit Adjustment Proposal for The Plan Year 2007-08)

Jeff Jensen, Director, Public Employees Health Program (PEHP) presented a proposal to change the prescription benefit of the state employee Summit Care and Advantage Care plans. PEHP is proposing a hybrid plan that would equalize the pharmacy benefit for both managed care plans by requiring the following new co-payment levels:

- \$4 for generic drugs
- 20% of cost (\$10 minimum, \$40 maximum) for preferred brand name drugs
- 35% of cost (\$30 minimum, no maximum) for non-preferred brand name drugs

Mr. Jensen stated that the overall effect of the proposed changes would be cost-neutral to the State. There are no changes to the benefit premiums; however, it will change what the individual employee pays for prescriptions. PEHP anticipates a potential savings as employees shift to lower costing drugs, such as the generic, and choose the more cost effective managed care plans over the Preferred Care.

Rep. Dee inquired who really benefits from this change. Mr. Jensen responded that the plans will ultimately benefit once the differences in the benefit structure are removed. It would then allow PEHP to negotiate with the provider networks for better contracts and discounts.

Rep. Dee expressed concern that the proposed plan change would drive a portion of the insured to a generic product that they and their doctor may not agree with. He also asked if an individual chose to stay with a brand drug under this new proposal, would he or she be paying more. Mr. Jensen indicated that the cost of the brand drug to the employee would likely be the same or less.

Rep. Dee suggested that a pharmacy benefit change such as this needs to be in a summary plan document and should be a part of the product when it is sold to the customer. This type of change should not take effect in a mid year.

Mr. Jensen clarified that the proposed change would be effective July 1, 2007 at the beginning of the new plan year. The benefit change would be presented to state employees during open enrollment.

Rep. Bigelow asked if PEHP has made any minor, immaterial changes to the plans in the past without coming to the Legislature. Mr. Jensen responded that he was unclear what was meant by a plan change.

Rep. Bigelow commented that one of the reasons for placing this item on the agenda was to determine where the line should be drawn in determining what material or immaterial benefit or plan changes should come before the Legislature for funding or approval. In this case, where there may be a major shift in policy to move individuals to another part of the plan, perhaps this is an issue that the Legislature should address. Rep. Bigelow asked what was the intent of this change.

Mr. Jensen stated that the intent was to level the playing field between the two managed care programs to encourage employees to look at the networks and the discounts they are offering rather than the differences in the benefit structure as they are now constituted.

Speaker Curtis noted that the statute requires that the Legislature approve plan changes. Even though a benefit change may be revenue neutral, it could have a fairly significant impact in the overall plan. He asked if this is a plan change. Mr. Jensen stated that it is a benefit change and that it will impact certain members on the plan.

**MOTION:** Speaker Curtis moved to go onto the next item on the agenda. The motion passed unanimously with Sen. Dmitrich and Sen. Mayne absent for the vote.

#### **4. Interim Revenue Updates**

Sen. Hillyard referred to John Massey for a discussion on the TC-23.

John Massey, LFA, explained that the Revenue Estimating Committee meets at least twice a year to provide revenue estimates to the Legislature. The first revenue estimate is reported prior to the

General Session in December of each year and the second estimate is made in February during the General Session. Mr. Massey pointed out that in between those revenue estimates, it may be valuable for the Revenue Estimating Committee to meet more often and take a closer look at economic indicators that could potentially impact revenue.

Sen. Hillyard asked John Nixon, Director, Governor's Office of Planning and Budget (GOPB), to comment on how the Governor's Office looks at these revenue estimates. Mr. Nixon indicated that GOPB's economists look at the TC- 23 every month to see if the revenues are coming in as anticipated. Revenue comes in cycles to the State and it is difficult to take the surplus on one month and project that out to the whole year. The Governor's Office has talked about getting together with LFA's economists and the Tax Commission and looking at those reports to come up with a consensus forecast. Mr. Massey commented that LFA also reviews the TC-23 monthly.

Rep. Becker expressed an interest in having a report that shows how revenues align with appropriations made by the Legislature.

Rep. Becker asked if they will be seeing either a point estimate or an estimate within a range of revenue compared to collections. He found it very helpful to be able to look at those point estimates, or at least, the revenue ranges.

Sen. Hillyard commented that we should be looking at other economic factors influencing revenue to get a better range and feel for where we are going.

**MOTION:** Co-Chair Bigelow moved that in addition to the meetings currently held, the Revenue Assumptions Committees hold additional meetings in May and September of each year for the purpose of reviewing economic indicators and producing a report to the Legislature and the Governor. This report should be available by May 15th and September 15th and include a review of revenue collections to date and an analysis of the trend of these revenues within an appropriate range. The report should also include the assumptions used for the analysis. It is anticipated that a similar report would also be available by December 15th and February 7th in association with the current process of revenue estimating.

Rep. Bigelow commented that moving this to a committee will provide varied input and better revenue estimates and ranges.

Rep. Becker asked if this motion included that the report show where we stand relative to what the projected budget is. Sen. Hillyard confirmed that this will be a part of it.

Rep. Moss inquired about the membership of the Revenue Estimating Committee and how often does the Committee meet. Mr. Massey responded that the committee meets three to four times a year and comprises representatives from the Fiscal Analyst's Office, the Governor's Office of Planning and Budget, the Tax Commission, the Department of Workforce Services, the Department of Natural Resources, the University of Utah, as well as private sector contractors.

Sen. Hillyard commented on how well they do arrive at a consensus.

A vote was taken on the motion. The motion passed unanimously with Sen. Knudson and Speaker Curtis absent for the vote.

#### **5. State School Board - Discussion on teacher salary increases**

(Handouts: Educator Supplemental Salary Adjustment/Draft Rule Language/April 16, 2007; Email/Harrington/Salary Adjustments/April 4, 2007)

Patti Harrington, State Superintendent of Public Instruction, Utah State Board of Education, spoke to the educator salary adjustments provided in HB382 - Amendments to Education Funding. She explained that she had met with Senate Leadership to discuss the intent of the Legislature in this matter. Subsequent to that meeting, she sent an email (Handout: Email/Harrington/Salary Adjustments/April 4, 2007) to District Superintendents, Regional Service Centers, and Charter Schools relating Senate Leadership's response to the State Board of Education's inquiries.

Supt. Harrington's email states that "HB 382 (Dee) provides salary adjustments for licensed educators who have had a satisfactory or better evaluation. The amount of the adjustment was reported to be approximately \$2500, to address both salary and benefit needs, along with the expected withholdings that would come from that amount. The exact amount is still being determined as we work through the exact numbers of educators who are to be included in the funding."

Supt. Harrington stated that as per assurances from Senate Leadership, it was her understanding that the educator salary adjustments are ongoing and will be enhanced by both student growth and WPU increases in future years.

Supt. Harrington also mentioned a draft administrative rule that outlines a consistent method for enacting educator salary adjustments in accordance with 53A-17a-153 Educator Salary Adjustments enacted by the 2007 Legislature. (Handout: Legislative Supplemental Salary Adjustment Draft Rule Language, April 16, 2007)

Patrick Ogden, Associate Superintendent, USOE, commented on the draft administrative rule and presented two examples of salary schedules that would place the salary increase either "ON" or

"IN" the salary schedule. A third option would be to give the districts the authority to decide how they were going to handle the salary adjustment.

Sen. Jones stated that she would like to see some assurance that the salary adjustments were going to teacher salaries, and Rep. Dee asked for an assurance that the teachers were in fact going to receive \$2500 as the Legislature had intended.

Mr. Ogden explained that based on the number of teachers identified in the CACTUS licensed teacher database system, the USOE will distribute \$2400 per teacher to each district and charter school. In November, those accounts will be adjusted based on actual teacher accounts. Mr. Ogden indicated that the \$2400 is a gross figure prior to any district or personal deductions. What actually will end up in a teacher's pay check will be different and different for each school district.

Rep. Dee said that the intent of the Legislation was that each teacher was to receive a full \$2500. Funding was calculated for \$2600 in anticipation of State monies taken out for ancillary costs, such as FICA, social security, etc.

Mr. Ogden responded that the number of licensed teachers will vary, and based on current numbers from the CACTUS database, the amount of money that will be distributed to the districts is \$2480 per teacher. Out of the \$2480, the districts will need to pay taxes, social security, Medicare, retirement, deductions for 401 K's and 457's, etc. Mr. Ogden stated that the bill was silent as to the amount each teacher would receive.

Rep. Dee said that the bill may have been silent on the amount, but the legislators themselves were not. Legislators made a commitment to the teachers of Utah for \$2500. He said that it would be important to track the actual numbers of qualified teachers and budget for them.

Sen. Hillyard suggested that a supplemental appropriation maybe needed for fluctuations in the count of a qualified teacher at any given time. He believed that the legislation was specific, and that the Utah State Board of Education will have to come back and report on how much they were short.

Rep. Clark asked why the number of actual qualified teachers in the CACTUS database has changed. Mr. Ogden stated that the districts cleaned up their CACTUS databases to accurately reflect actual numbers.

Rep Clark stated that the Legislature appropriated an amount that was adequate to cover in excess so that the teacher would receive a \$2000 net with a \$2500 to a \$2600 gross increase. He is intent in seeing that the teachers get what was intended and this may require some additional supplemental funding.

Pres. Valentine stated that the email/memo accurately reflects the discussion he had with Supt. Harrington, and reflects what the Senate thought was going to happen, that each teacher receives a gross increase of \$2500. The funding was based upon the number of teachers that were certified at the time, and that amount was \$2638 per teacher. President Valentine asked Mr. Ogden to clarify if the districts added more to the CACTUS database when they saw that the Legislature intended to increase the system by \$2500. Mr. Ogden stated that he did not know why those numbers were different.

Pres. Valentine stated that he intended to call for a legislative audit of the school districts to determine why the numbers changed. Sen. Hillyard requested that those numbers be broken out district by district.

Rep. Bigelow asked for an estimate of how much those numbers changed. Mr. Ogden stated that those numbers changed by about 200.

In referring to the administrative draft rule language *3A (3) ensure that each educator that receives a salary adjustment has received a satisfactory or above job performance rating in their most recent evaluation*, Rep. Bigelow asked about how many teachers at any given time receive a satisfactory evaluation. Supt. Harrington said that 90-95% of teachers pass the evaluation.

Rep. Bigelow asked what happens to the funds that are not used in cases where the teacher does not qualify. Mr. Ogden said that any unused balances within the program become carryover for use in the following year.

Rep. Bigelow suggested that USOE re write the language in: *4A(3) Failure to submit the required reports on a timely basis will render the school district, charter school or USBD, ineligible for participation in the Educator Salary Adjustments program the following year* to reflect the actual procedure followed in withholding funds when districts fail to report and how those funds are to be reinstated when the reports are eventually submitted. Mr. Ogden stated that the USOE sends out the funds to the districts based on the number of qualified teachers and the districts actually withhold the funds until the reports are produced.

Rep. Moss mentioned that she has spoken with teachers who do not think that they will be receiving the full \$2500 salary adjustment. If in fact the teachers' salary adjustment was given in perpetuity, she felt that it would be important that the teachers see the legislative pay raise on the salary schedule. She also asked about district negotiations and the 4 percent increase in the WPU. Mr. Ogden indicated that most of the 4 percent increase in the WPU will go toward funding health insurance increases, utility cost increases, and increases for classified employees not included in the qualified licensed teacher category. The exact use of WPU funds will be up to the individual districts to negotiate with their employee groups.

Rep. Bigelow requested that the draft administrative rule language ensure that the school districts, charter schools, and the Utah School for the Deaf and Blind, follow the guidelines to disburse the base increase equally and include that stipulation in the reporting of the use of those funds. He suggested that when 4A(3) is rewritten, that the words "and remedy any problems" be included to insure that problems are corrected before funding can resume.

Rep. Dee asked the USOE to provide the committee with two items: 1) what individual districts are anticipating doing with the salary increases and how they intend to administer it; and 2) to offer some solutions, based on real numbers, on how teachers' paychecks show a \$2500.

Speaker Curtis asked clarifying questions regarding the "IN" and "OUT" salary schedules and the impact of teacher evaluations on the base increase. Sen. Eastman noted that the \$2500 becomes a part of the teacher base salary. Supt. Harrington stated that if the salary adjustment is placed "ON" the schedule it gives the feeling of every year decision making while "IN" the schedule it gives the feeling of permanence. As far as the reporting is concerned, it will be easier to track the numbers "ON" the schedule, rather than "IN" the schedule.

Sen Hillyard stated that the Legislature funded the salary adjustment at \$2638 per teacher and asked the USOE to verify that the figure was now \$2480 per teacher. Supt. Harrington confirmed that it was. She went onto to clarify that the USOE has on a regular basis, encouraged the districts to clean up their CACTUS database records to exactly reflect the numbers of licensed teachers. When the districts realized that accurate numbers meant additional money, the district CACTUS database records underwent careful scrutiny. She did not want to infer that there had been names added to the report that didn't belong there.

Rep. Bigelow moved to strike from the intended rule language any references to "satisfactory or above job performance rating" in the provided funding. He explained that the reason for the proposed motion was to bring to the fore, whether or not the increase was based on merit or was an across the board salary increase.

Pres. Valentine stated that this would be a double bind motion, if in fact the Executive Appropriations Committee did have the legal authority to strike the language. If one votes for the motion, then you are rewarding teachers who do not have satisfactory performances. This would be a difficult vote to defend. If one votes against the motion, then you say that you do not want to put it into the salary schedule. How can you make an informed vote on that type of motion?

Sen. Hillyard stated that before he accepted the motion he would ask legal counsel if the statute contains a merit component in it. If so, can Executive Appropriations change the law by amending the rule.

John Fellows, Deputy General Counsel, LRGC, read the following from HB 382 - Amendments to Education Funding, Section 53A-17a-153 (4) *School districts, charter schools, and the Utah Schools for the Deaf and the Blind shall award bonuses to educators as follows: (4)(c) salary adjustments may be awarded only to educators who have received a satisfactory rating or above on their most recent evaluation.*

Mr. Fellows stated that the statute is binding on both the Utah State Board of Education and the Executive Appropriations committee. Therefore, any modifications to the statute would require action by the entire Legislature.

Sen. Hillyard ruled that the motion would conflict with the law. He stated that there was no motion before the body.

Rep. Clark reserved the right to make a motion. He asked what was meant by "non-administrative licensed staff" under rule 3D. Mr. Ogden responded that it meant classified employees.

**MOTION:** Rep. Clark moved that the Executive Appropriations Committee recommends that the Utah State Office of Education include "IN the Salary Schedule" for the recommended educator salary adjustment of \$2500. The motion passed unanimously with Sen. Knudson and Rep. Moss absent for the vote.

## **6. Department of Human Services - Discussion of 6% Local Contractor COLA**

Sen. Hillyard stated that the Legislature funded a 6% COLA increase in FY 2008 for providers based on the personal service contract component. The question at hand was whether the Legislature intended the increase to apply to just the personal service component or to the total budget.

Lisa Michelle-Church, Executive Director, Department of Human Services, informed the Committee that the Department follows the legislative intent set forth in the Budgetary Procedures Act and uses the formula developed in a 2001 report "Review of Calculation Method for Local Provider COLA" prepared by the Office of the Legislative Fiscal Analyst. The report set the percentage for each provider as far as the percentage of their contract that deals with personal services. The percentage ranges from 65% to 80% depending on the type of provider. There are about 600 providers in the Department of Human Services and those providers will get the portion of the 6% that is attributable to their contracted personal services. Ms. Church indicated that in her department that equates to about \$7 million. She reassured the Committee that the entire amount will be distributed to providers.

Sen. Hillyard asked for a clarification that no matter what the range for personal services, each provider will see a 6% COLA increase. Ms. Church confirmed that they would.

Sen. Hillyard asked the Fiscal Analyst how much more money would it require if the 6% COLA was based on the provider's total budget. John Massey said that the difference between 1% is \$1.2 million on salary and \$1.7 million on total contracts. This equates to \$500,000 per 1% differential. If another 2% were added, the total cost would be \$3 million.

Sen. Killpack asked if a portion of the 6% COLA would be used to cover administrative costs, more specifically 2%. This could have the effect of passing only a 4% COLA increase onto providers. Ms. Church reassured the Committee that the entire 6% would be passed on. She also pointed out that the Health and Human Services Appropriations Subcommittee did address increases in administrative costs separate from salary increases. Even though administrative increases were not considered, Ms. Church felt that this issue needed to be discussed further.

Rep. Lockhart asked about the statute that states that the Governor consider offering the same percentage increases for cost of living for local providers as state employees. Ms. Church stated that the Budgetary Procedures Act, 63-38-2, states that the Governor as well as the Legislature consider using the same percentage increase for cost of living for local providers as for persons employed by the state.

Rep. Lockhart asked if the State cuts a check for each provider's employee. Ms. Church said that the State does not, but DHS has a rate that they pay the provider for services performed. Rep. Lockhart asked if the providers are required by contract to pass the COLA onto their employees. Ms. Church responded that they are not. There is nothing in the statute requiring that providers do this and this is an area that needs to be strengthened.

Sen. Mayne stated that we need to encourage providers to pass the COLA onto their employees in order to attract better qualified and committed employees. Ms. Church indicated that DHS communicates the intent of the Legislature to the providers, and it was her understanding that the providers were going to pass the COLA on to their employees.

**7. UDOT - Clarification of matching requirements for \$30 million Corridor Preservation funding.**

Carlos Braceras, Deputy Director, UDOT, addressed the Committee regarding the \$40 million appropriation for corridor preservation in FY 2007 and FY 2008. He explained that during the 2006 General Session, the Legislature appropriated \$10 million with intent language that designated to match local corridor preservation funds generated through locally imposed vehicle registration fees. During the 2007 General Session, the Legislature appropriated \$30 million for "advanced right of way" purchases. Mr. Braceras asked if it was the Legislature's intent that the \$30 million be used for right of way acquisition for projects expected to be built within a seven year construction cycle or for corridor preservation with a construction time line up for thirty years.

Mr. Braceros also explained that to date, the \$10 million has not been used. Seven counties have passed the match requirement. He asked how long should UDOT hold matching funds for local governments.

Sen. Killpack stated that the Legislature had intended that the funding be used as a match for state roads along with the local government match by a \$10 fee. Thus far the local governments have not drawn on the \$10 million. He expects this to happen fairly soon if local governments want the continued State match. Sen. Killpack suggested that UDOT maintain the match monies for two years.

Rep. King agreed that the match be made available for two years. He asked which of the seven counties have implemented the match? Mr. Braceros noted: Davis, Iron, Salt Lake, Summit, Utah, Wasatch, and Weber counties. Salt Lake, Summit, Utah, and Wasatch counties began their programs last June. Davis, Iron, and Weber counties take effect June, 2007.

Rep. King stated that it is incumbent on those who live in smaller counties when there are matching programs like this, to point out that it is easier for populated counties to participate in those kinds of programs whether or not the need is equal.

Speaker Curtis mentioned that Salt Lake County did an optional tax last year on the ballot and dedicated 1/4 of a 1/4 percent, about \$10-\$11 million, towards Mountain View corridor preservation. He asked if that would be available for local match.

Mr. Braceros stated that during this last session, those monies were identified and rolled into what is referred to as a "county of the first class" state highway fund. In addition to those funds, 70% of the vehicle registration fee and a second Salt Lake County tax 1/5 or a 1/4 have been rolled over into the first class highway fund. The fund will be used for a \$100 million bond that was authorized against those.

Speaker Curtis asked if the bond will qualify as a match. Mr. Braceros stated that it did.

Rep. Lockhart expressed an interest in making sure that we are not providing an incentive for counties to wait two years in anticipation that the State will pay for it anyways. She inquired about the counties' reticence in not coming forward to ask for the match. Mr. Braceros said that having an administrative process in place may be part of the problem. He indicated that the UDOT is going to be more aggressive in pursuing opportunities to leverage State dollars. In support of earmarking these funds for corridor preservation, Mr. Braceros explained that the needs for corridor preservation are overwhelming and that there is a backlog of properties they cannot fund.

Pres. Valentine asked UDOT to come back with a recommendation on how to provide an incentive for these counties to participate in the local match. Mr. Braceros stated that the local

governments are going to have to make some choices as to where they want to spend their money and if they want to leverage those monies with State dollars. He expects to be able to report back on those activities.

Mr. Braceras asked the committee to comment on the revolving fund aspect of the Corridor Preservation Fund. Sen. Killpack clarified that the State fund is revolving and the local one is not. He suggested that all of the funds become revolving.

Sen. Hillyard asked if this would require amending the law. Pres. Valentine stated that it would require a statutory change.

Mr. Braceros suggested that during the next legislative session that intent language be crafted to clarify uses of the Corridor Preservation Funds.

### **Item 3 - Report from PEHP on Potential Plan Change**

Speaker Curtis requested move back to Item 3 - Report from PEHP on Potential Plan Change, to discuss PEHP's position on whether or not the proposed pharmacy benefit change is allowed by statute.

Dan Anderson, Counsel, Utah Retirement Systems (URS) and PEHP, stated that he believed that the benefit change is allowed by statute. He noted that in the past there have been business situations which have required or been good practice to modify the benefit package after the legislative session. He gave the example of new products, new drugs, or new procedures that have been put on or taken off the benefit package. The request to equalize the pharmacy benefit for the two managed care networks will allow PEHP to negotiate for lower rates on the medical piece. Mr. Anderson observed that there needs to be further discussion on matters such as this.

Rep. Bigelow stated that he encouraged PEHP to come before the Committee to make them aware that this process was taking place. He said that there are things they need to do which some might construe as a benefit change. He felt that it was an item that the Committee needs to discuss and make clear to PEHP in what instances they need to come forward and when they do not.

Rep. Dee stated that he considers this a benefit change and recommended that the change take place after negotiations for the next benefit year.

Sen. Hillyard stated that it has become apparent that we need to clarify what "approval of the Legislature" really means in this regard during General Session.

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

Sen. Hillyard adjourned the meeting at 3:21 p.m.