

Office of the
Legislative Fiscal Analyst

FY 2005 Budget Recommendations

Joint Appropriations Subcommittee for
Executive Offices and Criminal Justice

Board of Pardons

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1.0 Board of Pardons

Summary

The Board of Pardons is a separate and independent organization from the Department of Corrections and the Courts. The Board is constitutionally created (Utah Constitution Article VII, Section 12). It has full parole, pardon, and commutation authority over all offenders sentenced to the custody of the Utah Department of Corrections for confinement. It makes decisions regarding the release of offenders from prison, sets conditions of parole supervision, orders restitution, and may remit fines, subject to regulations as provided by statute. It is the release authority that screens appropriate inmate candidates for release from prison. The Board’s authority is outlined in the Utah State Constitution and Utah Code Annotated, Section 77-27 et. seq.

“The mission of the Board is to further public safety by rendering decisions regarding the length of incarceration, parole supervision, termination of sentence, commutation of sentence and pardons.”¹

Hearings are held at the Board of Pardons Offices and at the prisons at Draper and Gunnison. The Board also travels to the jails operated by Beaver and Washington Counties to hold hearings for State inmates at those locations.

	Analyst FY 2005 Base	Analyst FY 2005 Changes	Analyst FY 2005 Total
Financing			
General Fund	2,547,600		2,547,600
Dedicated Credits Revenue	2,200		2,200
GFR - Tobacco Settlement	77,400		77,400
Beginning Nonlapsing	144,800		144,800
Total	\$2,772,000	\$0	\$2,772,000
Programs			
Board Of Pardons and Parole	2,772,000		2,772,000
Total	\$2,772,000	\$0	\$2,772,000
FTE/Other			
Total FTE	33		33
Vehicles	6		6

¹ Green, John. *Form 103 – FY 2005 Budget Request*. Utah Board of Pardons. September, 2003.

2.0 Issues: Board of Pardons

2.1. Status of Non-lapsing Balance Amounts

An analysis of non-lapsing balances reveals that year end balances at the Board of Pardons grew annually through FY 2002. However as a result of General Fund budget cuts in FY 2003, the Board's non-lapsing balances will decrease by an average of 8% per year for fiscal years 2003 and 2004. The Analyst therefore recommends no change to the Board's non-lapsing balance amounts.

2.2 Non-lapsing Intent Language

In the past, the Legislature granted the Board of Pardons authority to carry into the next year spending authority that remains unused at the end of a given fiscal year. Such "non-lapsing" authority has been given via intent language in the initial appropriation. As a matter of policy, the Analyst recommends reserving non-lapsing intent language for supplemental action, when agencies have more detailed accounting of carry-forward needs.

2.3 Funding of Structural Vacancies

State agencies routinely request funding for 100% of full-time equivalent (FTE) positions. Yet, many large organizations experience some proportion of those FTE that are always vacant and therefore do not require funding for salaries and benefits. Given the size of the Board of Pardons, the Analyst found no significant turn-over savings, and therefore recommends no change the Board's personnel funding.

3.0 Program: Board of Pardons

Recommendation

The Analyst recommends \$2,772,000 for the Board of Pardons. This amount reflects the non-recurrence of a \$9,100 one-time General Fund appropriation that funded an extra workday in FY 2004. It also includes a \$144,800 non-lapsing balance that the Legislature allowed the Board to carry-forward from FY 2004.

	2003 Actual	2004 Estimated*	2005 Analyst	Est/Analyst Difference
Financing				
General Fund	2,580,100	2,547,600	2,547,600	
General Fund, One-time		9,100		(9,100)
Dedicated Credits Revenue	900	2,200	2,200	
GFR - Tobacco Settlement	77,400	77,400	77,400	
Transfers - Corrections	18,100			
Beginning Nonlapsing	158,700	144,800	144,800	
Closing Nonlapsing	(144,800)	(144,800)		144,800
Lapsing Balance	(7,500)			
Total	\$2,682,900	\$2,636,300	\$2,772,000	\$135,700
Expenditures				
Personal Services	2,034,100	2,110,700	2,105,400	(5,300)
In-State Travel	19,000	15,800	15,800	
Out of State Travel	7,100	5,600	5,600	
Current Expense	503,800	475,300	477,300	2,000
DP Current Expense	118,900	28,900	23,100	(5,800)
Other Charges/Pass Thru			144,800	144,800
Total	\$2,682,900	\$2,636,300	\$2,772,000	\$135,700
FTE/Other				
Total FTE	33	33	33	
Vehicles	6	6	6	

*Non-state funds as estimated by agency

Summary

The Board of Pardons is the release authority for inmates in the State of Utah. As such, the Board is responsible for reviewing an inmate's performance after the inmate is incarcerated, and determining when and under what conditions the inmate may be released after serving the minimum sentence required by law. In addition, the Board reviews violations of release conditions to decide whether an inmate should be sent back to prison, etc.

The Executive Director of Corrections does not have line authority over the Board of Pardons and cannot direct the Board of Pardons to release inmates early or impose release conditions.

In 1983 the Board of Pardons went from part-time to full-time. As a quasi-judicial body, the Board has a responsibility not only for public safety and inmate treatment equity, but for record keeping and processing that must meet stringent legal scrutiny. In Utah most sentencing is indeterminate, and the Board, de facto, becomes the final sentencing authority and sets the standard for length of confinement for most felons.

In analyzing the Board of Pardons’ request for FY 2005, the Office of the Legislative Fiscal Analyst looked at trends in non-lapsing balances and structural vacancies. The Analyst recommends no change to the Board of Pardons budget as a result of this analysis. However, as a matter of policy, the Analyst recommends the Legislature reserve issuance of non-lapsing intent language for supplemental action, at a time when agencies have a better accounting of resources and needs.

Non-lapsing balances in-line with expectations

In its review of non-lapsing balances, the Office of the Legislative Fiscal Analyst compared anticipated year-end balances at the time of initial appropriation with actual year-end balances. The Analyst found that prior to FY 2002, actual non-lapsing balances were, on average, \$18,000 (12.3%) more than appropriated. Beginning with Fiscal Year 2003, however, the Analyst found that non-lapsing balances at the Board of Pardons were about \$13,500 (8%) less than appropriated. The table below demonstrates the Analyst’s findings.

Difference between Actual and Appropriated Nonlapsing Balances					
	<u>FY 2000</u>	<u>FY 2001</u>	<u>FY 2002</u>	<u>FY 2003</u>	<u>FY 2004</u>
Amount	\$5,900	\$20,800	\$26,900	(\$13,300)	(\$13,900)
Proportion	4.1%	14.3%	18.5%	-7.7%	-8.8%

The Analyst also reviewed the annual growth of non-lapsing balances in the Board of Pardons. Similar to its findings on the difference between appropriated and actual balances, the Analyst found that budget cuts enacted last year stemmed what was previously annual growth in balances.

Annual Change in Nonlapsing Balances					
	<u>FY 2000</u>	<u>FY 2001</u>	<u>FY 2002</u>	<u>FY 2003</u>	<u>FY 2004</u>
Increase/(Decrease)	\$5,900	\$14,900	\$6,100	(\$13,300)	(\$13,900)

The Analyst suggests no change in the Board of Pardons’ appropriation is necessary to address non-lapsing balances.

Better information on needs recommended before Legislature grants non-lapsing authority

In many of the past years, the Legislature gave the Board of Pardons blanket approval to carry forward funds from one year to the next. The Analyst understands that the ability to carry unspent funds from year to year allows agencies to upgrade equipment and provide for long term planning. However, the Analyst believes such authorization should be tied to specific projects and approved by the legislature in accordance with the Budgetary Procedures Act:

UCA 63-38-8.1(3) (a) Each agency that wishes to preserve any part or all of its appropriation balance as nonlapsing shall include a one-time project's list as part of the budget request that it submits to the governor and the Legislature at the annual general session of the Legislature immediately before the end of the fiscal year in which the agency may have an appropriation balance.

Given that the Board last year received non-lapsing authority for FY 2004, there is no requirement for a detailed accounting of carry-forward projects to be included in a supplemental appropriation. For FY 2005 the Analyst recommends that no carry-forward authority be provided until the 2005 Legislative session, when the Board will have a better idea of what balances will be available.

Analysis suggests no adjustment for turn-over savings at the Board of Pardons

As a routine part of its annual budget review, the Analyst also examined the Board of Pardons’ personnel funding. The Analyst notes that the Board of Pardons regularly requests 100% funding for personnel costs, including funding of vacant positions. This practice is common among state agencies.

In many large agencies, vacant positions are not short-term, but instead, some level of vacancy occurs continually throughout the year. This so called “structural vacancy” should not require funding from the Legislature.

The Board of Pardons’ budget request for FY 2005 includes funding for one vacant position (\$9,300). An historical analysis comparing personal services appropriations to actual costs shows that the Board of Pardons had some turn-over savings through FY 2002. In FY 2003, the Board’s personnel costs were more than anticipated during the 2002 General Session. The table below shows the annual difference in appropriated and actual personnel costs for the Board of Pardons in the last five years.

Difference Between Actual and Appropriated Personnel Costs					
	<u>FY 2000</u>	<u>FY 2001</u>	<u>FY 2002</u>	<u>FY 2003</u>	<u>FY 2004</u>
Amount	(\$150,700)	(\$62,400)	(\$113,000)	\$46,900	\$18,600
Percent	-8.1%	-3.1%	-5.6%	2.3%	0.9%

The Analyst suggests no change in the Board’s appropriation is necessary to address turn-over savings.

4.0 Additional Information: Board of Pardons

4.1 Funding History

	2001	2002	2003	2004	2005
Financing	Actual	Actual	Actual	Estimated*	Analyst
General Fund	2,515,100	2,537,000	2,580,100	2,547,600	2,547,600
General Fund, One-time				9,100	
Dedicated Credits Revenue	600	600	900	2,200	2,200
GFR - Tobacco Settlement	77,400	77,400	77,400	77,400	77,400
Transfers - Corrections			18,100		
Beginning Nonlapsing	165,900	172,000	158,700	144,800	144,800
Closing Nonlapsing	(172,000)	(158,700)	(144,800)	(144,800)	
Lapsing Balance			(7,500)		
Total	\$2,587,000	\$2,628,300	\$2,682,900	\$2,636,300	\$2,772,000
Programs					
Board Of Pardons and Parole	2,587,000	2,628,300	2,682,900	2,636,300	2,772,000
Total	\$2,587,000	\$2,628,300	\$2,682,900	\$2,636,300	\$2,772,000
Expenditures					
Personal Services	1,982,800	2,035,900	2,034,100	2,110,700	2,105,400
In-State Travel	15,000	14,100	19,000	15,800	15,800
Out of State Travel	11,000	5,300	7,100	5,600	5,600
Current Expense	507,200	485,600	503,800	475,300	477,300
DP Current Expense	71,000	87,400	118,900	28,900	23,100
Other Charges/Pass Thru					144,800
Total	\$2,587,000	\$2,628,300	\$2,682,900	\$2,636,300	\$2,772,000
FTE/Other					
Total FTE	35	32	33	33	33
Vehicles	3	5	6	6	6

*Non-state funds as estimated by agency.