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MEMORANDUM FOR EXECUTIVE APPROPRIATIONS COMMITTEE

FROM: Jonathan Ball
DATE: May 10, 2010
SUBJECT: Federal Grants

Since our last meeting, we have been working closely with our legal counsel and the Governor's Office of Planning and Budget regarding federal grants. In that time, two things have become clear:

1. The Ryan White Part B grant can move forward without further legislative action. Funding for the grant was approved by the Legislature in Senate Bill 1, Item 97, 2010 General Session.
2. The federal funds process outlined in Utah Code 63J-5 could use updating. A good bit of confusion exists about when a proposed grant should be approved, how it should be approved and by whom, and even what constitutes approval.

To address these issues and others, we have included in this month's EAC packet detailed information on the Ryan White Part B program as well as answers to the Committee's April questions regarding other federal grants. We have attached to this memorandum a briefing paper on the federal grants review process including some recommendations for improvement. Finally, as usual, you will find this month's Federal Funds report prepared and submitted by the Governor's Office of Planning and Budget.

Should you have any questions about these items prior to our May 18 meeting, please do not hesitate to contact me or Danny Schoenfeld.

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Federal Grants Review Process Briefing Paper

Introduction

This briefing paper summarizes provisions of law and current practice regarding legislative approval of federal grants, and makes recommendations that may reduce confusion as to when a proposed grant should be approved, how it should be approved and by whom, and what constitutes approval.

Normal Approval Process (UCA 63J-5-201)

Most federal grants go through the normal approval process during each annual general session, with some tweaking to fit the base budget bill process. The normal process goes as follows:

The requesting state agency submits a federal funds request to the Governor's Office for review and approval. If the Governor's Office approves, it submits the request for review and approval of the relevant legislative appropriations subcommittee. If the appropriations subcommittee recommends approval, the subcommittee submits the recommendation to the Executive Appropriations Committee. If the Executive Appropriations Committee approves, the Legislative Fiscal Analyst's Office includes the federal funds in the subsequent appropriations bill.

The following diagram illustrates the process outlined in statute:



Figure 1

Because the base budget bill usually is prepared early in the session, the process outlined above is modified slightly. After the Governor's Office approves requests, it submits a summary to the Legislative Fiscal Analyst's Office for inclusion in the base budget bill. In the following weeks, as the appropriations subcommittees review federal funds requests, they may recommend changes or deletions. The Executive Appropriations Committee then reviews the recommendations and directs the Legislative Fiscal Analyst's Office to include approved changes in a subsequent appropriations bill.

The following diagram outlines the federal funds process with the base budget bill:

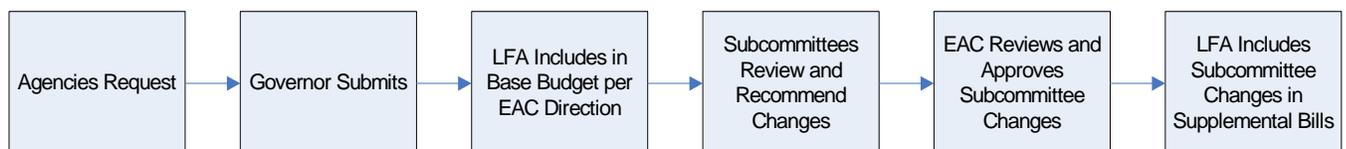


Figure 2

Secondary Approval Process (UCA 63J-5-202 and 63J-5-204)

While most federal grants are reviewed and approved through the normal process, sometimes agencies learn of federal grant opportunities outside of the timeframe of the annual general session. For these federal funds requests, statute provides for a secondary approval process.

Statute outlines three levels of federal grants. The review and approval process required depends on the grant level.

- 1. Low-Impact Federal Grants.** These grants can be approved by the Governor or Judicial Council. To qualify as a low-impact federal grant, the grant must meet all of the following requirements:
 - Result in the state receiving less than \$1 million in federal funding per year;
 - Require no additional permanent full/part-time employees; and
 - Require no new state money to match or participate.
- 2. Medium-Impact Federal Grants.** These grants must be submitted to the Executive Appropriations Committee for its review and recommendations. Medium-impact grants meet any one of the following conditions:
 - Result in the state receiving more than \$1 million but less than \$10 million per year;
 - Require one but less than 11 new permanent full/part-time employees; or
 - Require the state to expend up to \$1 million in new state money to match or participate.
- 3. High-Impact Federal Grants.** These grants must be approved by the full Legislature in an annual general session or a special session. High impact grants have any one of the following characteristics:
 - Result in the state receiving more than \$10 million in federal funding per year;
 - Require 11 or more new permanent full/part-time employees; or
 - Require the state to expend more than \$1 million in new state money to match or participate.

Medium and high impact federal grants must also be approved by the Governor or Judicial Council before going to the appropriate legislative body.

Executive Appropriations Committee Options

This section outlines the various policy options available to the Executive Appropriations Committee when reviewing medium impact federal grant requests that were not considered during the annual general session.

UCA 63J-5-204 states that the Executive Appropriations Committee shall review the federal funds request summary and may:

1. Recommend that the agency accept the new federal funds;
2. Recommend that the agency not accept the new federal funds; or
3. Recommend to the governor that the governor call a special session of the Legislature to review and approve or reject the acceptance of the new federal funds.

Since the Executive Appropriations Committee “may” make any of these three recommendations, it may also choose to take no action. If the committee takes no action, the agency may continue to apply for and implement the federal grant, or it could abandon the grant.

Statute is silent on the consequences if a state agency does not follow a recommendation of the Executive Appropriations Committee, presumably because the consequences will be determined by the Legislature at a different time.

Process Improvement Recommendations

The Analyst recommends that the Executive Appropriations Committee consider the following options for improving the federal funds approval process:

1. Streamlined application and processing of federal funds requests.

The Governor's Office of Planning and Budget and Legislative Fiscal Analyst's Office are jointly working on an automated process for submission of federal funds requests from the agencies to the Governor's Office and to the Legislature in order to reduce the processing time currently required.

2. Process change by the Legislative Fiscal Analyst's Office.

The Legislative Fiscal Analyst's Office will tie federal appropriations to the grants detail beginning with the base budget bill through subsequent budget bills throughout each general session.

3. Additional reporting.

The Legislative Fiscal Analyst's Office will generate an additional report that will show all federal grants, and provide this report each general session in conjunction with other reports such as the Consolidated Fees and Intent Language reports.

4. Follow up report for agencies to report to the Legislature.

The Legislature may wish to add a requirement that agencies report back at the end of the term of a federal grant, showing how funds were expended and what was accomplished.

5. Clarify statute.

The Analyst recommends the Legislature clarify provisions of UCA 63J-5-201 through 204:

- Amend UCA 63J-5-201 to reflect the base budget process, as outlined on page 2.
- Clarify what constitutes legislative approval in UCA 63J-5-201. Statute is unclear as to whether approval requires a specific motion by a subcommittee and the Executive Appropriations Committee, or simply inclusion of an appropriation in a bill passed by the Legislature.
- Clarify what is meant by "new federal program." It is unclear if this includes only a federal grant that the state has never had before, or if it includes reapplications of previously approved grants, or if it includes existing grants when funding amounts change.
- Clarify the meaning of "new state monies" and "new federal funds." The code doesn't clarify whether these terms include only new funds that the state has never spent or received before, or include changes in amounts, or any reapplication of a previously approved grant.