

JOINT RULES RESOLUTION ON FISCAL NOTE PROCESS

2011 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This resolution enacts a legislative rule to provide a process for attaching a performance note on legislation that creates a new program or agency and to provide a review process based on the performance note.

Highlighted Provisions:

This resolution:

- ▶ provides definitions;
- ▶ provides for the placement of a performance note on legislation that creates a new program or agency;
- ▶ outlines duties of the Office of Legislative Fiscal Analyst relating to determining whether or not a performance note is required;
- ▶ outlines duties of government entities to prepare a performance note;
- ▶ lists information that must be contained in the performance note;
- ▶ outlines the duties of the Legislative Fiscal Analyst and the legislative sponsor in relation to the content of a performance note;
- ▶ outlines duties of the Office of Legislative Auditor General relating to requesting performance notes from certain government entities that failed to submit notes during the legislative process and to provide information to government agencies;
- ▶ requires the Office of Legislative Auditor General to evaluate the performance of the new program or agency in reference to the performance note after the new program or agency is established;
- ▶ provides procedures for requiring the Executive Appropriations Committee to review those programs that fail to meet performance measures; and
- ▶ provides that the Executive Appropriations Committee may recommend that a program that fails to meet performance measures be repealed, defunded, have its appropriations reduced, or some other action.

Special Clauses:

33 None

34 **Legislative Rules Affected:**

35 ENACTS:

36 **JR4-2-404**

37 **JR4-2-405**

38

39 *Be it resolved by the Legislature of the state of Utah:*

40 Section 1. **JR4-2-404** is enacted to read:

41 **JR4-2-404. Performance Review Notes -- Review of Performance Measures.**

42 (1) As used in this section:

43 (a) (i) "New agency" means

44 (A) a state governmental entity that did not previously exist;

45 (B) a governmental entity that requires a new appropriation for new funding;

46 (C) a governmental entity that is modified by legislation to add significant services or

47 benefits that were not previously offered by the governmental entity; or

48 (D) a governmental entity that is modified by legislation to substantially expand the

49 scope of individuals or entities that are entitled to receive the services or benefits offered by the

50 governmental entity; and

51 (ii) "New agency" does not mean a governmental entity that has been renamed or

52 moved to another organizational position within that branch of government unless the

53 government entity meets the criteria in Subsection (1)(a)(i)(C) or (D).

54 (b) (i) "New program" means:

55 (A) a program created by statute that did not previously exist;

56 (B) a program that requires a new appropriation or an increased appropriation for the

57 purpose of adding significant services or benefits that were not previously offered;

58 (C) a program that is modified by legislation to add significant services or benefits that

59 were not previously offered by the program; or

60 (D) a program that is modified by legislation to substantially expand the scope of

61 individuals or entities that are entitled to receive the services or benefits offered by the

62 program; and

63 (ii) "New program" does not mean a program that has been renamed or moved to

64 another organizational position within that branch of government unless the government entity
65 meets the criteria in Subsection (1)(b)(i)(C) or (D).

66 (2) (a) When the Legislative Fiscal Analyst receives the electronic copy of approved
67 legislation from the Office of Legislative Research and General Counsel, the Legislative Fiscal
68 Analyst shall, within three legislative days, review and analyze the legislation to determine if it
69 creates a new agency or a new program.

70 (b) If the Legislative Fiscal Analyst determines that the legislation creates a new
71 agency or a new program, the Legislative Fiscal Analyst shall:

72 (i) notify the sponsor of the legislation that the legislation qualifies for a performance
73 note;

74 (ii) notify the governmental entity that will supervise the new agency or the
75 governmental entity that will administer the new program that the governmental entity must
76 submit a performance note that meets the requirement of Joint Rule 4-2-404(4) to the
77 Legislative Fiscal Analyst within three legislative days; and

78 (iii) prepare a statement to be attached to the legislation containing the information
79 required by Subsection (1)(c).

80 (c) The statement shall:

81 (i) disclose that a performance note is required, disclose the name of the governmental
82 entity required to provide the performance note, and disclose the date on which the
83 performance note is to be provided by the governmental entity; or

84 (ii) disclose that a performance note is not required because the legislation does not
85 create a new program or new agency.

86 (b) (i) The Legislative Fiscal Analyst may extend the deadline for the governmental
87 entity's submission of the performance note if:

88 (A) the governmental entity requests that the deadline be extended to a date certain in
89 writing before the performance note is due; and

90 (B) the sponsor of the legislation agrees to extend the deadline.

91 (ii) If the deadline is extended, the Legislative Fiscal Analyst shall indicate the
92 extended deadline on the legislation.

93 (c) (i) (A) When a governmental entity provides a performance note to the Legislative
94 Fiscal Analyst, the sponsor of the legislation shall either approve the release of the performance

95 note or reject the performance note.

96 (B) If the sponsor approves the performance note provided by the governmental entity,
97 the Legislative Fiscal Analyst shall attach the performance note to the legislation.

98 (C) If the sponsor rejects the performance note provided by the governmental entity,
99 the Legislative Fiscal Analyst shall attach the following to the legislation:

100 (I) the performance note provided by the governmental entity, with a notation that the
101 sponsor rejected the submission; and

102 (II) if the sponsor provides an alternative performance note to the Legislative Fiscal
103 Analyst within three legislative days, the alternative performance note, with a notation that the
104 sponsor provided the alternative note due to the sponsor's rejection of the governmental entity's
105 submission.

106 (ii) If the governmental entity does not provide a performance note by the submission
107 deadline, the Legislative Fiscal Analyst shall attach a performance note to the legislation that
108 indicates only that the governmental entity did not submit performance measures by the
109 submission deadline.

110 (3) If the sponsor of the legislation disputes the fiscal analyst's determination as to
111 whether a performance note is required, the sponsor shall contact the Legislative Fiscal Analyst
112 to discuss that disagreement and provide evidence, data, or other information to support a
113 different determination.

114 (4) A performance note shall contain the following information:

115 (a) the name of the governmental entity submitting the performance note, as applicable;

116 (b) the names and titles of the individuals who prepared the performance note;

117 (c) a statement of performance measures that:

118 (i) explains the purpose and duties of the new program or agency;

119 (ii) lists the services that will be provided by the new program or agency;

120 (iii) lists the goals or impact that the new program or agency intends to achieve within
121 one, two, and three years;

122 (iv) lists the resources and steps required to achieve the goals;

123 (v) lists the benchmarks that the new program or agency will monitor to measure
124 progress toward the goals and outcome;

125 (vi) lists the performance measures that will be used to evaluate progress toward the

126 goals and outcome; and

127 (vii) states how information on progress and performance measures will be gathered in
128 a reliable, objective fashion.

129 (5) After legislation that creates a new program or a new agency has gone into effect,
130 the Legislative Auditor General shall, subject to the procedures and requirements of Section
131 36-12-15:

132 (a) provide an outline of best practices to the governmental entity that administers the
133 new program or to the new agency;

134 (b) include in the outline information to assist that governmental entity or new agency
135 with the creation of:

136 (i) policies that promote best practices;

137 (ii) performance measures; and

138 (iii) data collection procedures;

139 (c) for a new program or a new agency that was created by legislation where the
140 governmental entity failed to provide a performance note:

141 (i) provide a notice to the governmental entity that administers the new program or to
142 the new agency that the governmental entity or agency is required to submit a performance note
143 to the Legislative Auditor General within 30 days of the date of the notice;

144 (ii) retain the performance note that is received from the governmental entity or new
145 agency and forward a copy of the note to:

146 (A) the primary sponsor of the legislation;

147 (B) the opposite house sponsor of the legislation;

148 (C) the president of the Senate and speaker of the House; and

149 (D) the Senate minority leader and House minority leader; and

150 (iii) if the governmental entity or new agency fails to provide a performance review

151 note within the required deadline, provide notice to those listed in Subsection (3)(b)(ii) that a
152 performance note was requested from, but was not received from, the governmental entity that
153 administers the new program or the new agency.

154 (6) The Legislative Auditor General may use the performance note in its review of new
155 programs and agencies under Section 35-12-15.

156 Section 2. **JR4-2-405** is enacted to read:

157 **JR4-2-405. Failure to Meet Performance Measures -- Revocation of Program or**
158 **Appropriation.**

159 (1) Subject to the procedures and requirements of Section 36-12-15, the Legislative
160 Auditor General shall:

161 (a) review each new agency or new program that has been determined to be a new
162 agency or new program that is subject to the requirements of Joint Rule 4-2-404;

163 (b) if the legislation's performance note contained a performance note submitted by the
164 governmental entity and an alternative performance note submitted by the sponsor of the
165 legislation, review the new agency or new program under each of the performance note
166 standards; and

167 (c) make a determination as to whether the goals or proposed impacts and whether each
168 performance measure have been met or not met.

169 (2) (a) If the Legislative Auditor General makes a determination that the goals or
170 impact or the performance measures have not been substantially met or if a governmental entity
171 refuses to supply a performance note, the Legislative Auditor General shall provide notice of
172 the determination or refusal to:

173 (i) the new agency or the governmental entity that administers the new program;

174 (ii) the sponsor and opposite house sponsor of the legislation that was subject to the
175 performance note requirements under Joint Rule 4-2-404; and

176 (iii) the chairs of the Executive Appropriations Committee.

177 (b) Upon receipt of a notice issued under this Subsection (2), the chairs of the
178 Executive Appropriations Committee shall place the determination on the agenda for review
179 and consideration at the next Executive Appropriations Committee meeting.

180 (3) Upon consideration of the matter, the Executive Appropriations Committee may
181 elect to:

182 (a) direct the Office of Legislative Research and General Counsel to prepare legislation
183 that would repeal the new agency or new program and:

184 (i) adopt the legislation as a committee bill; or

185 (ii) decline to adopt the legislation as a committee bill;

186 (b) recommend that the Legislature reduce or eliminate appropriations for the new
187 agency or new program;

188 (c) take no action; or

189 (d) take another action that a majority of the committee approves.