

DEPARTMENT OF COMMERCE

BUSINESS, ECONOMIC DEVELOPMENT & LABOR APPROPRIATIONS SUBCOMMITTEE
STAFF: PATRICK LEE

BUDGET BRIEF

SUMMARY

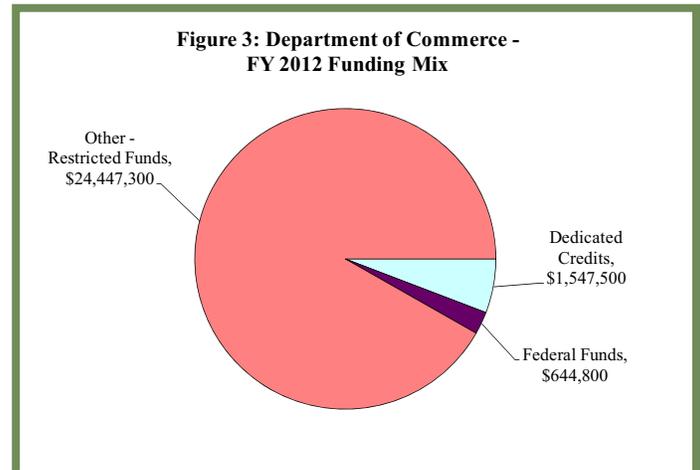
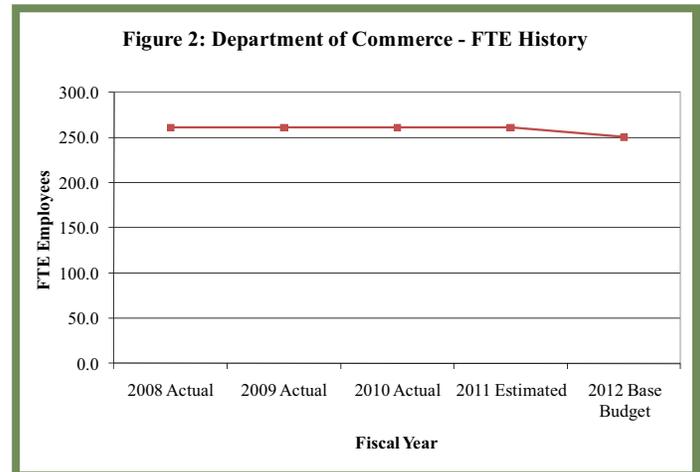
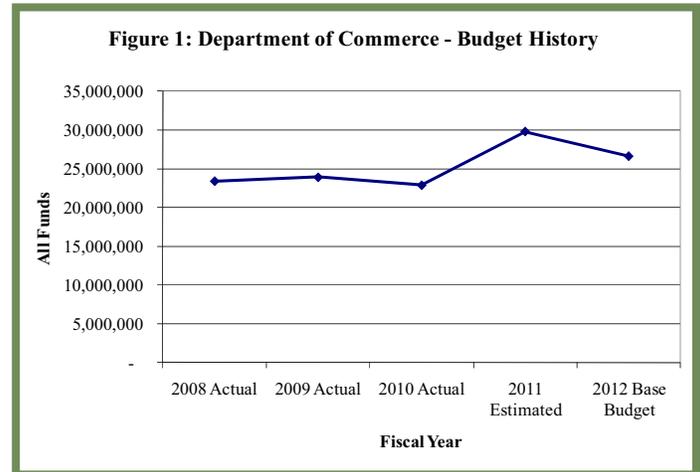
The Utah Department of Commerce is the licensing and registration agency for Utah’s professional and corporate community. Business registrations, professional licensing, consumer protection and education, oversight of public utilities and monitoring real estate and securities industries are all department responsibilities.

BACKGROUND AND ANALYSIS

The Department of Commerce budget history shows some fluctuations over the past few fiscal years. This is largely reflective of balances carrying across years, utilization of those balances and providing the necessary coverage for different costs. The total base appropriation for Commerce as passed in House Bill 5, *Business, Economic Development and Labor Base Budget*, was \$26,639,600. This includes nearly \$18.3 million (68.5%) from the Commerce Service Fund and nearly \$5.1 million (19.0%) from the Public Utilities Regulatory Fee (PURF).

The Department of Commerce does not have a General Fund appropriation and operates directly from the Commerce Service Fund and PURF, as mentioned above. There are other restricted accounts in the department budget that provide smaller portions of revenue sources including the following General Fund Restricted accounts, with accompanying FY 2012 appropriations: Factory Built Housing Fees (\$104,700), Geologist Education & Enforcement (\$10,000), Nurses Education & Enforcement (\$10,000), Pawnbroker Operations (\$129,000), and Utah Housing Opportunity Restricted Account (\$20,000).

Commerce has had reductions to their ongoing base during recent fiscal years, as well as balances swept as a source of one-time revenues. These included: \$450,000 one-time in nonlapsing funds from Public Utilities Professional & Technical Services, \$1,000,000 one-time in nonlapsing funds from Consumer Services Professional & Technical Services, and FY 2011 ongoing reductions amounting to \$482,200.



COMMERCE SERVICE FUND AND PURF

Commerce Service Account - The Commerce Service Account, created in Utah Code **13-1-2** is the major funding source for the Department of Commerce operations, services and administration. According to statute, "There is created a restricted account within the General Fund known as the Commerce Service Account. The restricted account...consists of fees collected by each division and by the department. At the end of each fiscal year, the director of the Division of Finance shall transfer into the General Fund any fee collections that are greater than the legislative appropriations from the Commerce Service Account for that year. The department may not charge or collect a fee or expend money from the restricted account without approval by the Legislature."

Below are the amounts from the Commerce Service Fund that have been transferred over the past four fiscal years:

<u>Fiscal Year</u>	<u>Revenue to Comm. Svc. Fund</u>	<u>Transfer to GF</u>
FY 07	\$55,789,040	\$8,319,676
FY 08	\$62,244,984	\$11,871,617
FY 09	\$57,925,978	\$6,611,501
FY 10	\$67,829,646	\$9,439,438
FY 11 (to 1/28/11)	\$51,890,764	-

Public Utilities Regulatory Fee - a special fee to defray the cost of regulation imposed upon all public utilities. The fee is assessed as a uniform percentage of the gross operating revenue from the preceding calendar year derived from each public utility's business and operations during that period. These fees provide funding to the Division of Public Utilities within the Department of Commerce, as well as the Public Service Commission.

FY 2011-12 AGENCY BUDGET REQUESTS

Commerce has prioritized certain budget requests for FY 2012 according to the following, if the possibility arises for new ongoing or one-time funding:

1. 4.0 FTE Securities Examiners – \$342,000 ongoing (\$85,500 per 1.0 FTE)

These 4.0 FTE are intended to address the increase in assets under management cap from \$25 million to \$100 million for state-regulated investment advisers, as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. This particular provision of the law takes effect on July 21, 2011. See Appendix B for further details regarding the request.

FEDERAL FUNDS

Federal funds for Commerce Department are shown in the Issue Brief *Business, Economic Development, and Labor: Federal Funds*. Both federal grants were included in House Bill 5, passed in the current general session, and are the following: Harold Rogers Prescription Drug Monitoring Program (\$398,196) and Pipeline Safety Grant (\$246,600).

INTENT LANGUAGE

See Appendix A for proposed agency intent language and explanations.

FEES

For the FY 2012 fee schedule for the Department of Commerce, please refer to the issue brief, *Department of Commerce: FY 2012 Fee Schedule*.

BUDGET DETAIL

The following table shows the budget history for the Utah Department of Commerce. The *FY 2012 Base Budget* column includes targeted budget changes, reflecting policymaker direction, which were included and passed in House Bill 5 of the current general session.

Department of Commerce						
Sources of Finance	FY 2010 Actual	FY 2011 Appropriated	Changes	FY 2011 Revised	Changes	FY 2012* Base Budget
Federal Funds	294,100	644,800	0	644,800	0	644,800
Dedicated Credits Revenue	781,400	1,547,500	0	1,547,500	0	1,547,500
GFR - Commerce Service	22,391,200	18,249,000	4,919,200	23,168,200	(4,919,200)	18,249,000
GFR - Commerce Service, One-time	0	(27,600)	27,600	0	0	0
GFR - CSF - PURF	150,000	5,096,800	(4,946,800)	150,000	4,946,800	5,096,800
GFR - Factory Built Housing Fees	104,700	104,700	0	104,700	0	104,700
GFR - Geologist Ed. & Enf.	10,000	10,000	0	10,000	0	10,000
GFR - Nurses Ed & Enf Account	10,000	10,000	0	10,000	0	10,000
GFR - Pawnbroker Operations	129,000	129,000	0	129,000	0	129,000
GFR - Utah Housing Opportunity Rest Acct	20,000	20,000	0	20,000	0	20,000
Transfers	607,000	0	832,500	832,500	(832,500)	0
Transfers - Within Agency	(607,000)	0	(832,500)	(832,500)	832,500	0
Pass-through	13,500	50,000	0	50,000	0	50,000
Beginning Nonlapsing	4,334,400	359,300	4,352,700	4,712,000	(3,750,800)	961,200
Closing Nonlapsing	(4,712,000)	(231,600)	(508,400)	(740,000)	556,600	(183,400)
Lapsing Balance	(620,500)	0	0	0	0	0
Total	\$22,905,800	\$25,961,900	\$3,844,300	\$29,806,200	(\$3,166,600)	\$26,639,600
Line Items						
Commerce General Regulation	21,790,300	24,961,900	184,100	25,146,000	(156,500)	24,989,500
Building Inspector Training	0	260,000	832,500	1,092,500	(832,500)	260,000
Public Utilities Prof & Tech Services	534,900	150,000	1,462,100	1,612,100	(1,312,100)	300,000
Consumer Services Prof and Tech Services	580,600	590,000	1,365,600	1,955,600	(865,500)	1,090,100
Total	\$22,905,800	\$25,961,900	\$3,844,300	\$29,806,200	(\$3,166,600)	\$26,639,600
Categories of Expenditure						
Personnel Services	16,488,100	17,737,900	666,600	18,404,500	(30,200)	18,374,300
In-state Travel	75,900	87,000	3,400	90,400	(300)	90,100
Out-of-state Travel	22,000	810,000	(710,800)	99,200	(1,100)	98,100
Current Expense	4,588,000	5,012,100	5,012,600	10,024,700	(3,429,600)	6,595,100
DP Current Expense	1,601,100	2,264,900	(1,147,500)	1,117,400	294,600	1,412,000
DP Capital Outlay	63,600	0	0	0	0	0
Capital Outlay	300	0	0	0	0	0
Other Charges/Pass Thru	66,800	50,000	20,000	70,000	0	70,000
Total	\$22,905,800	\$25,961,900	\$3,844,300	\$29,806,200	(\$3,166,600)	\$26,639,600
Other Data						
Budgeted FTE	261.0	261.0	0.0	261.0	(10.5)	250.5
Actual FTE	227.7	0.0	0.0	0.0	0.0	0.0
Vehicles	25	25	0	25	0	25

*Does not include amounts in excess of subcommittee's state fund allocation that may be recommended by the Fiscal Analyst.

LEGISLATIVE ACTION

The Analyst recommends the Legislature:

1. Consider agency requests for intent language and budget priorities as outlined in Appendixes A and B and approve these requests as deemed appropriate by the subcommittee.
2. Consider changes, make appropriate adjustments, and approve the schedule of fees for the Department of Commerce as found in the issue brief *Department of Commerce: FY 2012 Fee Schedule*.

APPENDIX A

The Department of Commerce has asked that the intent language included below be considered by the subcommittee with regard to PURF and the Uniform Building Code.

Public Utilities Regulatory Fee

PURF are paid every month by every utility ratepayer in Utah. The fees are paid for utility rate regulation, and historically have been exclusively reserved for those purposes.

As reported by the Department of Commerce, rate cases are cyclical, with workload varying greatly from month-to-month. Rather than keep a much larger staff that would have significant down-time throughout the year, the Professional and Technical funds are maintained to allow hiring outside consultants to provide expert testimony on rate cases. Over the past few years rate cases have increased in both frequency and complexity.

The language below is intended to address this issue:

The Legislature intends that, at the end of the fiscal year 2011, unused funds for the Committee of Consumer Services lapse to the Committee's Professional and Technical Services Fund.

It is the intent of the Legislature that the Professional and Technical funds for the Committee of Consumer Services be nonlapsing at the end of fiscal year 2011.

The Legislature intends that, at the end of the fiscal year 2011, unused funds for the Division of Public Utilities lapse to the Professional and Technical Services Fund.

It is the intent of the Legislature that the Professional and Technical funds for the Division of Public Utilities be nonlapsing at the end of fiscal year 2011.

Uniform Building Code

UCA Section 58-56-9 creates a fund based on a surcharge from all building permit fees paid throughout the state. Those funds are used to give grants to providers of continuing education on state building codes. Historically those funds have been statutorily nonlapsing. In House Bill 253 (2010 General Session), the Legislature removed the statutory nonlapsing authority for those funds.

As reported by the Department of Commerce, this presents some issues for the construction industry in terms of providing consistency for continuing education. The continuing education on building codes is cyclical through the two-year license renewal period with one year (renewal year) including numerous continuing education offerings, and the following year with fewer. Providing nonlapsing authority to the account will likely create some continuity for education funds in the Uniform Building Code.

Proposed language:

It is the intent of the Legislature that the building codes education funds received by the Division of Occupational and Professional Licensing under Section 58-56-9 be nonlapsing at the end of fiscal year 2011.

APPENDIX B

Dept of Commerce Budget Prep Submission

Please provide a detailed description of this request including the problem or need this request will resolve.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 that was signed into law by President Obama on July 21, 2010 will significantly increase the workload of the Division of Securities. Prior to the passage of the Wall Street Reform Act, investment advisers with less than \$25 million in assets under management were licensed and regulated by the state securities regulators in the states where they conduct business and investment advisers with more than \$25 million in assets under management were licensed and regulated by the U.S. Securities and Exchange Commission (SEC). Beginning in 2011, that threshold will change to \$100 million in assets under management. This change will result in approximately a 70% increase in the number of investment advisers licensed and regulated by the Securities Division, and given the greater size and complexity of these investment advisers will likely double the workload of the Division's Licensing and Compliance Section which is responsible for reviewing and processing the licensing applications, conducting routine periodic audits, screening and investigating complaints, and bringing enforcement actions against investment advisers who violate Utah's securities laws.

The rationale for including this provision in the Wall Street Reform Act was the admission by the SEC that it did not have the resources to conduct regular examinations of these mid-sized investment advisers, and that many of the advisers with assets under management of less than \$100 million had never been audited by the SEC. By shifting the regulation of these mid-sized investment advisers to the states, the SEC hoped to be able to use their examination resources to concentrate on the large firms that have a significant impact on the overall functioning of the securities markets.

On June 3, 2010, Governor Herbert called a press joint press conference with our federal partners from the local offices of the FBI, SEC, and U.S. Attorney's Office to point the significant problem of securities fraud in the state of Utah. The combined investor losses for cases currently under investigation by the Division of Securities and these federal partners was estimated at \$1.4 billion. The Governor announced a new public awareness campaign being carried out by the Securities Division to educate Utah investors on the need to thoroughly check out an offer before investing their money. This campaign has included billboards, television spots and public radio announcements all based on the "I'm a Con Man" theme. This campaign was funded through fines paid by securities law violators. The campaign has resulted in a significant increase in the number of complaints and general inquiries received by the Division.

To handle this increased work load, the Division is requesting four Securities Examiner FTE's. These positions will be filled by examiners specifically focused on handling licensing applications, audits, and investigations related to investment advisers. The approval to recruit and retain these FTE's will allow the Division to proactively reduce the number of investment fraud schemes that plague our state's economy and its citizens. By routinely auditing the investment advisers in the state, the Division can head off potential problems at an early stage rather than waiting for investors to file complaints after investment capital has been lost and the chance of recovery is limited. Funding of this request would also enhance Utah's business and investment climate by ensuring a level playing field for those securities professionals who consistently adhere to the standards set forth in Utah's securities laws.

What changes in program(s), service(s), expenditure(s), fee(s), etc. will be made if this request is not funded?

If this request is not funded, the Division will not have the resources to conduct any routine examinations of securities licensees for this federal mandate. Instead, the Division will be completely reactive, responding to investor complaints after the fact and prioritizing complaints that can be investigated based upon examiner workload. This delay will put more consumers at great financial risk to fraudulent activities that could have been investigated earlier.

Indicate any additional funding above the amount being requested that might be required for this request in future years.

There are no anticipated extraordinary expenses expected in future years.

What are the goal(s), objective(s), and performance measure(s) that directly relate to this request; and how will they be impacted?

The dramatic increase in the number of investment advisers licensed and regulated by the Division has a direct corollary relationship to the increase in the Division's workload. Without an increase in examiner resources, the increased workload will result in a significant drop in the Division's performance metrics: the time to process licensing applications will increase; the Division will not be able to meet its goals to audit all new investment advisers within 18 months after licensure and keep all investment advisers on a five-year routine examination schedule; and response time for screening and investigating investor complaints will increase.

What is the authority reference mandating this request? (ie federal law, state law, court action, governor's initiative)

The increase in the assets under management cap from \$25 million to \$100 million for state-regulated investment advisers is mandated by federal law as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. This provision of the law takes effect on July 21, 2011.

Describe why you think this request meets a mandatory definition. (public health and safety requests must constitute an emergency)

The Increase in workload is being generated by federal mandate. Without an increase in then number of examiners, the new investment advisers shifted from federal to state regulation will largely go unregulated. Securities fraud and investment scams in Utah are a serious and persistent problem. Individual investors are obviously affected, but the entire Utah business climate suffers as capital investment is misdirected to fraudulent schemes instead of to legitimate businesses that can use the capital to grow, create jobs, and help build the economy.

Four FTE Securities Examiners:

Step 59 (mid-range for Classification) Salary: \$54,400 X 4

Benefits @ 45%: 24,500 X 4

DHRM Expenses: \$700 X 4

Travel Expenses: \$500 X 4

Current Expenses (Parking, Office Supplies, Phone): \$3,600 X 4

Data Processing (Computer Maintenance / DTS): \$1,800 X 4

Sub-Total \$85,500 Per FTE = \$342,000