Summary

S.J.R. 5 requires that legislation creating any new program or significantly expanding an existing program have a performance note. For S.J.R 5, significantly is:

A bill that increases the program’s budget by 10% or exceeds $500,000.

The Analyst will make judgment calls on bills that fall short of the definition but meet the spirit and intent of S.J.R. 5.

A performance note is a set of goals, outcomes, measures, benchmarks, and resources that will be used to gauge whether a program has performed as the Legislature intended.

This report explains how the bill will be implemented.

The short version is:

1. The Analyst determines if the bill needs a performance note.
2. The responsible state agency is notified with a form the agency fills out.
3. The agency’s answers become the performance note.
4. The sponsor may dispute the analyst’s original determination or the agency’s note.
5. The sponsor may write a performance note that is attached with the agency’s note.

Detailed Version

A bill requires a performance note if the Analyst determines that the bill meets any of these criteria:

Does the bill:
- Create a new state government entity
- Create an entity that requires new funding
- Provide significant new services or benefits
- Expand existing services to a new or enlarged population

The following criteria do not qualify for a performance note:
- Renamed or reorganized programs

Determination Procedure:

1. When the bill is received from Legislative Research and General Counsel the assigned analyst makes an immediate and preliminary determination of the bill’s need for a performance note.
2. If the analyst determines that the bill needs a performance note, the analyst notifies the Fiscal Note Coordinator who, in consultation with the Deputy Director, makes the final determination.
3. If the Coordinator and Deputy Director agree, then the sponsor and the responsible agency are notified. The sponsor will be notified in person or by phone.
4. The sponsor may dispute the Analyst’s determination by providing evidence, data or other information that supports a different determination. The Analyst will document the process.

The Analyst’s determination will be shown on the fiscal note. (see appendix)

Notification Procedure

The agency notification form (see appendix) asks questions about the new program or expansion of services and how it will be implemented:

- A statement of purpose and duties
- Performance measures
- Services provided
- Goals and expected outcomes
- Resources required
- Benchmarks
- How the information will be collected so that it is reliable and objective

The agency’s answers become the Performance Note.
Sponsor Approval Procedure

The agency’s performance note is attached to the bill. If the sponsor rejects the agency’s note, the sponsor may generate his or her own performance note and it will be attached to the bill with the agency’s rejected note.

Agency Failure to Respond

If an agency fails to submit a note, that failure would be noted and attached to the bill.

Legislative Auditor General Follow-up

The Legislative Auditor General will review each new agency or program including those that do not provide measures. Based on those findings, the Legislative Audit Subcommittee may direct the Auditor General to do a more in-depth audit. At least annually, the Auditor General will provide to Executive Appropriations a report listing the new agencies and programs and a description of the review conducted and the determination made.

Legislative Follow-up

Executive Appropriations Committee may recommend that the Legislature take action against non-performing programs.

Time Constraints

Legislative rule allows the Fiscal Analyst three days to complete a fiscal note. S.J.R. 5 allows:

• 3 days for the Analyst to determine if a bill requires a performance note
• 3 days for the agency to submit a performance note
• 3 days for the sponsor to provide an alternate performance note if the agency’s note is rejected

Appendix Contents:

1. Types of performance measures
2. Performance note business rules (process diagram)
3. Fiscal note showing performance note determination
4. Agency questionnaire/performance note
5. S.J.R. 5

Types of Performance Measures

Outcome Measures

Program performance measures show that the world would be a better (or worse) place and you can document it. Examples:

• Teenage drunk driving accidents
• Infant mortality rates
• Skin cancer deaths per 10,000

Activity Measures

These show how hard an agency is working or how busy they are. Examples:

• Leased office space maintained in square feet
• Percent of paroled offenders convicted of a new felony within three years of release
• Number of traffic citations per officer

Efficiency Measures

These measure cost per service or outcome. Examples:

• Tax Commission cost per dollar collected
• Collections per auditor
• Average income per acre from agricultural leasing

Benchmarks

Benchmarking is the process of comparing your processes and performance measures to private or public best practices and results. Dimensions typically measured are quality, time, and cost. Examples:

• Cost per unit
• Productivity per worker
• Time to process a client through a given service

Input Measures

These are not performance measures. This is where agencies measure the Legislature’s performance by how much money the Legislature appropriates. Examples:

• Average appropriation per student
• State cost per veteran
Performance Note Business Rules

**Legislative Research & General Counsel (LRGC)**

Attorney checks "Likely Needs Performance Note" or "Likely Does Not Need Performance Note" in bill file. Sends numbered bill to LFA.

**LFA**

E-mail to analyst contains attorney's recommendation. The lead analyst makes a preliminary finding that a Performance Note is or is not required and forwards all positive recommendations to Coordinator and Deputy Director. (3 days allowed)

Performance Note required.  
Performance Note not required.

**LFA**

The Coordinator will notify the sponsor by phone or in person. Notify agency. Post to Status.

LFA  
Post to Status. **STOP**

**Sponsor**

The sponsor may dispute LFA's determination by providing evidence, data, or other information to the LFA that supports a different determination.

**Agencies**

Receive request for information. Prepare Performance Note

Request extended deadline.  
Accept original due date.

**LFA**

Due date may be extended if requested by agency before current deadline and if approved by sponsor. Post new date in Status.

**LFA**

Receive agency Performance Note, notify sponsor and analyst. Post missed deadlines to Status.

**Sponsor**

Approve or reject agency Performance Note

Reject  
Approve

**LFA**

Attach Agency Performance Note to bill. Post decision to Status.

**LFA**

Attach Agency Performance Note to bill. Post decision to Status. **STOP**

**Sponsor**

Sponsor decides to write or not write Alternative Performance Note.

**Sponsor**

Will not. **STOP**

**Sponsor**

Sponsor writes Alternative Performance Note. (3 days allowed)

**LFA**

Attach sponsor's Alternative Performance Note to bill. **STOP**

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102-105
The determination would be done as soon as the analyst gets the bill.

108-113
Filling out the form constitutes writing the Performance Note.

129-131

138-141

146-149

110-113

122-128, 142-145

132-133

134-137

138-141

Short Title: Sales and Use Tax and Income Tax Amendments

Performance Note Required from: State Tax Commission by January 5, 2012

State Government Impact  (UCA 36-12-13(2)(b))

This bill increases General Fund revenue by $15,631,600 in FY 2012 and $10,491,800 in FY 2013. Due to the 5% nonrefundable Earned Income Tax Credit (EITC), this bill decreases revenue to the Education Fund by $13,500,000 in FY 2012 and $14,269,500 in FY 2013. The bill authorized a transfer to the Education Fund in an amount equal to the EITC revenue impact.

Revenues FY 2011 FY 2012 FY 2013
General Fund $10,491,800 $10,491,800
General Fund, One-time 5,139,800
Education Fund (14,269,500) (14,269,500)
Education Fund, one-time 769,500
Total Revenue $0 $2,131,600 ($3,777,700)

Expenditures
General Fund ($14,269,500) ($14,269,500)
General Fund, One-time 769,500
Education Fund 14,269,500 14,269,500
Education Fund, one-time (769,500)
Total Revenue $0 $0 $0

Net Impact: All Funds $0 $2,131,600 ($3,777,700)

Net Impact: General/Education Funds $0 $2,131,600 ($3,777,700)

Local Governments Impacts  (UCA 36-12-13(2)(c))

Certain local entities that saw an increase in revenue from the bifurcation of the food/nonfood bases will not see an increase in revenue. Local governments that saw a decrease in revenue from the food/nonfood base bifurcation are expected to see an increase in sales tax revenue of $17.6 million in FY 2012 and $18.8 million in FY 2013.

Resident & Business Direct Impacts  (UCA 36-12-13(2)(d))

By decreasing the general sales tax rate and increasing the food tax rate, this bill shifts the tax burden from non-food purchases to food purchases. About 180,000 individuals qualifying for the federal EITC will now qualify for a nonrefundable state EITC equal to 5% of the federal EITC, reducing income tax liability by $13,500,000 in FY 2012 and $14,269,500 in FY 2013. Businesses are expected to see a decrease in the cost of complying with the sales tax statute by a minimum of $1,000,000 annually.
**Performance Review Note** for H.B. 282 1st Sub. (Buff) 2013 General Session

**Short Title:** Sales and Use Tax and Income Tax Amendments -- McIff, K

Joint Rule 4-2-404 requires a Performance Review Note anytime the legislature significantly increases funding for:

- [x] New agency
- [ ] New services or benefits
- [ ] Serving a new or larger population

**Due:** January 3, 2013

**Contact Information**

- **Respondent:** Commerce Department
- **Contact:** Peter Anjeweirden
  - Cell: 801.538.7425
  - Office: 538.801.1034
  - E-mail: panjeweirden@utah.gov
- **Author:** Mark Steinagel
  - Title: DOPL Director
  - Cell: 801.530.6292
  - Office: 801.804.7713
  - E-mail: msteinagle@utah.gov

**Purpose and duties of the new program, agency, services, or population served:**

**Services provided by funding increase:**

**One, two, and three year goals & outcomes:**

**Available resources and implementation plan:**

**Benchmarks:**

**Performance Measures:**

**Data gathering plan including reliability measures:**
JOINT RULES RESOLUTION ON FISCAL NOTE PROCESS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: John Dougall

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;
- provides that deadlines for fiscal notes and performance notes be calculated by business days rather than legislative days;
- outlines duties of the Office of the 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 the 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 the 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 the Legislative Audit Subcommittee to request an additional in-depth review of a new agency or program;
- 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:
None

Legislative Rules Affected:

AMENDS:
JR4-2-403

ENACTS:
JR4-2-404
JR4-2-405

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

Section 1. JR4-2-403 is amended to read:

JR4-2-403. Fiscal Notes.

(1) (a) (i) When the Legislative Fiscal Analyst receives the electronic copy of the approved legislation from the Office of Legislative Research and General Counsel, that office shall, within three [legislative] business days:

(A) review and analyze the legislation to determine its fiscal impact; and
(B) provide a fiscal note to the sponsor of the legislation.

(ii) The three day deadline for the preparation of the fiscal note may be extended if the Legislative Fiscal Analyst requests it, states the reasons for the delay, and informs the sponsor
of the legislation of the delay.

(b) If the Legislative Fiscal Analyst determines that the legislation has no fiscal impact, the Legislative Fiscal Analyst may release the fiscal note immediately after the sponsor has received a copy of the fiscal note.

(c) The sponsor may:

(i) approve the release of the fiscal note;

(ii) direct that the fiscal note be held; or

(iii) if the sponsor disagrees with the fiscal note, contact the Legislative Fiscal Analyst to discuss that disagreement and provide evidence, data, or other information to support a revised fiscal note.

(d) If the sponsor does not contact the Legislative Fiscal Analyst with instructions about the fiscal note within one 24 hour legislative day, the Legislative Fiscal Analyst shall release the fiscal note.

(e) The Legislative Fiscal Analyst shall make the final determination on the fiscal note.

(f) The fiscal note shall be printed with the legislation.

(2) If an amendment or a substitute to legislation appears to substantively change the fiscal impact of the legislation, the Legislative Fiscal Analyst shall prepare an amended fiscal note for the legislation.

(3) The fiscal note is not an official part of the legislation.

Section 2. JR4-2-404 is enacted to read:


(1) As used in this section:

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

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

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

(C) a governmental entity that is modified by legislation to add significant services or benefits that were not previously offered by the governmental entity; or

(D) a governmental entity that is modified by legislation to substantially expand the
scope of individuals or entities that are entitled to receive the services or benefits offered by the governmental entity.

(ii) "New agency" does not mean a governmental entity that has been renamed or moved to another organizational position within that branch of government unless the governmental entity meets the criteria in Subsection (1)(a)(i)(C) or (D).

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

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

(B) that requires a new appropriation or an increased appropriation for the purpose of adding significant services or benefits that were not previously offered;

(C) that is modified by legislation to add significant services or benefits that were not previously offered by the program; or

(D) that is modified by legislation to substantially expand the scope of individuals or entities that are entitled to receive the services or benefits offered by the program.

(ii) "New program" does not mean a program that has been renamed or moved to another organizational position within that branch of government unless the governmental entity meets the criteria in Subsection (1)(b)(i)(C) or (D).

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

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

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

(ii) notify the governmental entity that will supervise the new agency or the governmental entity that will administer the new program that the governmental entity must submit a performance note that meets the requirement of Subsection (4) to the Legislative Fiscal Analyst within three business days; and
(iii) prepare a statement to be attached to the legislation containing the information required by Subsection (2)(c).

(c) The statement shall:

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

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

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

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

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

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

(e) (i) When a governmental entity provides a performance note to the Legislative Fiscal Analyst, the sponsor of the legislation shall either approve the release of the performance note or reject the performance note.

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

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

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

(B) if the sponsor provides an alternative performance note to the Legislative Fiscal Analyst within three business days, the alternative performance note, with a notation that the sponsor provided the alternative note due to the sponsor's rejection of the governmental entity's submission.
(f) If the governmental entity does not provide a performance note by the submission deadline, the Legislative Fiscal Analyst shall attach a performance note to the legislation that indicates only that the governmental entity did not submit performance measures by the submission deadline.

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

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

(a) the name of the governmental entity submitting the performance note, as applicable;
(b) the names and titles of the individuals who prepared the performance note; and
(c) a statement of performance measures that:
   (i) explains the purpose and duties of the new program or agency;
   (ii) lists the services that will be provided by the new program or agency;
   (iii) lists the goals and proposed impacts that the new program or agency intends to achieve within one, two, and three years;
   (iv) lists the resources and steps required to achieve the goals and proposed impacts;
   (v) lists the benchmarks that the new program or agency will monitor to measure progress toward the goals and outcome;
   (vi) lists the performance measures that will be used to evaluate progress toward the goals and proposed impacts; and
   (vii) states how information on progress and performance measures will be gathered in a reliable, objective fashion.

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

(a) provide an outline of best practices to the governmental entity that administers the new program or to the new agency;
(b) include in the outline information to assist that governmental entity or new agency with the creation of:

(i) policies that promote best practices;
(ii) performance measures; and
(iii) data collection procedures; and

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

(i) provide a notice to the governmental entity that administers the new program or to the new agency that the governmental entity or agency is required to submit a performance note to the Legislative Auditor General within 30 calendar days of the date of the notice;
(ii) retain the performance note that is received from the governmental entity or new agency and forward a copy of the note to:
(A) the primary sponsor of the legislation;
(B) the opposite house sponsor of the legislation;
(C) the President of the Senate and Speaker of the House; and
(D) the Senate minority leader and House minority leader; and
(iii) if the governmental entity or new agency fails to provide a performance review note within the required deadline, provide notice to those listed in Subsection (5)(c)(ii) that a performance note was requested from, but was not received from, the governmental entity that administers the new program or the new agency.

(6) The Legislative Auditor General may use the performance note in its review of new programs and agencies under Section 36-12-15.

Section 3. JR4-2-405 is enacted to read:

JR4-2-405. Review of Programs -- Failure to Meet Performance Measures -- Revocation of Program or Appropriation.

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

(a) review each new agency or new program that has been determined to be a new
agency or new program that is subject to the requirements of JR4-2-404;

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

(c) make a determination as to whether each goal, proposed impact, and performance measure has been met or not met, and whether the new agency or new program has substantially met its goals and proposed impacts, and has provided adequate performance measures; and

(d) if authorized and prioritized by the Legislative Audit Subcommittee, perform a second, more in-depth review of a new agency or new program and revise or change the determination based upon the results of the in-depth review.

(2) (a) At least annually, the Legislative Auditor General shall provide the Executive Appropriations Committee with a report listing the new agencies and new programs reviewed, and for each new agency or program, a description of the review conducted and the determination made.

(b) If a governmental entity refuses to supply a required performance note or if the Legislative Auditor General makes a determination that a new agency or new program has not substantially met its goals, proposed impacts, or has not provided adequate performance measures, the Legislative Auditor General shall provide notice of the refusal or determination to:

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

(ii) the sponsor and opposite house sponsor of the legislation that was subject to the performance note requirements under JR4-2-404, or the President of the Senate or Speaker of the House, as appropriate, if the sponsor or opposite house sponsor is no longer serving as a legislator; and

(iii) the chairs of the Executive Appropriations Committee.

(3) Upon receipt of a report or notice issued under Subsection (2), the chairs of the
Executive Appropriations Committee shall place the report or notice on the agenda for review and consideration at the next Executive Appropriations Committee meeting.

(4) When considering a report or notice submitted under Subsection (2), the Executive Appropriations Committee may elect to:

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

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

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

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

(c) take no action; or

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