MINUTES OF THE
EXECUTIVE APPROPRIATIONS COMMITTEE
Tuesday, August 18, 2015 – 2:00 p.m. – Room 445 State Capitol

Members Present:
Sen. Lyle W. Hillyard, Co-Chair
Rep. Dean Sanpei, Co-Chair
Sen. Jerry W. Stevenson, Vice Chair
Rep. Brad L. Dee, Vice Chair
Sen. J. Stuart Adams
Sen. Jim Dabakis
Sen. Gene Davis
Sen. Luz Escamilla
Sen. Peter C. Knudson
Sen. Karen Mayne
President Wayne L. Niederhauser
Sen. Ralph Okerlund
Rep. Patrice M. Arent
Rep. Rebecca Chavez-Houck
Rep. James A. Dunnigan
Rep. Francis D. Gibson
Speaker Gregory H. Hughes
Rep. Brian S. King
Rep. Brad R. Wilson

Members Excused:
Rep. Joel K. Briscoe

Staff Present:
Mr. Jonathan Ball, Legislative Fiscal Analyst
Mr. Steven Allred, Deputy Director
Ms. Greta Rodebush, Legislative Secretary

Note: A copy of related materials and an audio recording of the meeting can be found at www.le.utah.gov.

1. Call to Order/Approval of Minutes

Co-Chair Hillyard called the meeting to order at 2:06 p.m. He welcomed Dr. Jill Curry, a new member of the LFA staff, assigned to the Utah College of Applied Technology (UCAT) and the Utah State Board of Education.

Co-Chair Hillyard also announced that the Office of the Legislative Fiscal Analyst (LFA) received a national award for IT technology. Government Computer News (GCN), a national publication, awarded the State of Utah and the Legislative Fiscal Analyst Office one of ten national awards for innovation in government information technology. The award is for LFA's new cloud based fiscal note system. Co-Chair Hillyard noted that LFA and its contractor, Utah Interactive, will be presented with the award at GCN's black tie gala in the Washington D.C. area on October 14, 2015.

Co-Chair Hillyard excused Rep. Briscoe who was attending a family funeral.

MOTION: Rep. Sanpei moved to adopt the minutes of July 14, 2015. The motion passed unanimously with Sen. Davis, President Niederhauser, and Speaker Hughes absent for the vote.

2. Federal/Non-federal Grants Review

Mr. Ken Matthews, Federal Assistance Management Officer, Governor's Office of Management and Budget (GOMB), presented "Federal and Non-Federal Grants Report" dated August 18, 2015.
Mr. Gary Syphus, Fiscal Analyst, LFA, provided assistance.

Under federal grants, there were five new grants and one continuation of an existing grant requiring legislative action. In addition, the Governor's Office approved three new federal grants and one reapplication of an existing grant.

Under non-federal grants, there were two new grants requiring legislative action and one new grant approved by the Governor's Office.

Mr. Matthews noted for this month that there was no grant needing EAC approval that would require additional state money if federal funding were to be reduced or eliminated.

Sen. Escamilla asked a procedural question relating to an executive order and federal grants. Mr. Matthews indicated that he would follow up on her request.

Co-Chair Hillyard announced that the Executive Appropriations Committee would not be meeting in the month of September due to the Legislature's scheduled off-site visit. He suggested that if there were any grants that needed approval prior to the EAC meeting in October, to please contact Mr. Ball.

MOTION: Rep. Sanpei moved to recommend acceptance of the federal and non-federal grants as outlined on page 1 of the handout entitled, "Federal/Non-Federal Grants Review and Approval" under the heading, "Grants Requiring EAC Review and Recommendation" and dated today, August 18, 2015. The motion passed unanimously with Sen. Davis absent for the vote.

3. Actuarial Valuation of Other Post-Employment Benefits

Mr. Steven Allred explained that Other Post-Employment Benefits (OPEB) refers to benefits, other than pensions, that a state or local government employee receives as a part of his/her retirement package. In Utah, these benefits principally involve health care benefits. In order to cap the state's financial liability associated with increasing health care costs, the Legislature passed HB 213 in the 2005 General Session, which eliminated the OPEB program for new employees hired after January 1, 2006.

Mr. Allred further explained that the Governmental Accounting Standards Board (GASB) requires a bi-annual determination of OPEB liabilities.

Mr. Allred showed how Utah's OPEB Unfunded Liability is reflected on the Fiscal Health Dashboard. He pointed out that the state's total liability and the unfunded portion of the liability have declined over the years and will continue to do so as benefits are used and more assets are added to a trust fund. Currently, Utah's OPEB is now funded at 53 percent of the Actuarial Accrued Liability (AAL). Mr. Allred also stated that Utah's annual required contribution rate to the trust fund will not go up and may go down because the liability is declining.

Mr. Bob Russell, Actuary, Hay Group, presented the report, "State of Utah Other Postemployment Benefit Plan December 31, 2014 Actuarial Valuation." He gave an overview of the plan provisions, plan demographics, key valuation results, valuation methods and actuarial assumptions. He also discussed changes in the actuarial cost and amortization methods used in determining the Annual Required Contribution (ARC). Based on current requirements, Mr. Russell indicated that the state is doing very well towards funding the future need.

Rep. King asked what effect the change in the amortization method from 20 years open to 10 years open had on the Annual Required Contribution. Mr. Russell responded that the change in the amortization method has made a difference in the amortization cost of about $3 or $4 million. He further clarified that the change in the amortization method is based on discussions with the OPEB Board.

Mr. Ball asked Mr. Russell to review the change in the amortization period as outlined on Slide 9 of the presentation. Mr. Russell proceeded to explain the difference between a closed amortization period and an open amortization period.

Sen. Hillyard asked if we, as a legislative body, could request that the 10 year open amortization period be changed back to a 20 year open amortization period. Mr. Russell responded in the affirmative but noted that the funding would slow down and the assets would not grow as fast.

Mr. John Reidhead, Director, Division of Finance, and OPEB Trust Board member, explained that the Board had met on Monday to discuss the change in the amortization period. The Board felt that a 20 year amortization period might not result in fully funding the AAL in a timely manner. Therefore, the Board recommended the 10 year amortization period.

Rep. King inquired about the makeup of the OPEB Trust Board and if the Board's authority to make changes was in statute. Mr. Ball confirmed that the Board had statutory authority to make changes.

4. Higher Education Mission/Equity Based Funding Report

Mr. Spencer Pratt, Fiscal Manager, LFA, reported that during the 2014 General Session, Higher Education received $50 million for Mission-Based Funding – Acute Equity, and $7 million for Mission-Based Funding – Distinctive Mission. Given the size of those appropriations, LFA asked Higher Education to report on how the funding had been used.

Commissioner David L. Buhler, Utah System of Higher Education (USHE) focused his remarks on Acute Equity and Distinctive Mission funding as outlined in the following three handouts: "2014 – 2015 Mission Based Funding Update," "2014 – 2015 Mission Based Funding – Acute Equity," and "2014 – 2015 Mission Based Funding – Distinctive Mission."

By way of background, each of the institutions impacted by Mission Based Funding - Acute Equity or Distinctive Mission submitted updated proposals in July 2014 on how they would utilize funding for FY 2015. Subsequently, in memoranda to the State Board of Regents dated July 9, 2014, Commissioner Buhler recommended that the Regents approve the Acute Equity and Distinctive Mission Initiatives and allocations.

Equity funding was targeted at five institutions that have experienced a significant increase in the number of students over the past decade, but without corresponding funding increases. The purpose of Equity funding is to provide Utah resident students at USHE institutions similar state support regardless of the institution which they attend. Utah State University (Regional Campuses), Weber State University, Dixie State University, Utah Valley University, and Salt Lake Community College, received a portion of the $50 million appropriation, which moved them closer to 90 percent of their regional peer average.

Commissioner Buhler reported that most of the funding will be used to hire new faculty and student support staff to alleviate bottleneck areas in general education and high-demand programs. In addition, course offerings will be expanded online, as well as evenings, weekends, and summer.

Commissioner Buhler remarked that in the next ten years, higher education could grow by an additional 50,000 students. He stated that institutions will need to continue to receive support from the Legislature to provide access and affordability to prevent future acute equity challenges.

During the 2014 General Session, the Legislature also appropriated $7 million for Distinctive Mission Based funding. The funding is used to promote each institution's specific mission in supporting the Regent's Strategic Plan for increasing participation, completion, and economic development.

Rep. Chavez Houck asked clarifying questions about the revised budgets for Distinctive Mission funding.

Speaker Hughes felt that it would be valuable for EAC and the Higher Education Appropriations Subcommittee to receive specific and detailed program and budget information from each of the institutions during the interim leading up to the General Session.

Sen. Adams asked the Commissioner to comment on performance based funding. Commissioner Buhler responded that during the 2015 General Session, the Legislature approved $9 million in performance based funding and that the State Board of Regents had recently approved the funding model and allocations. He offered to send or provide the Committee with an update on performance based funding at an upcoming meeting.

5. Minimum School Program Estimates

Mr. Ben Leishman, Fiscal Analyst, LFA, presented "Minimum School Program Estimates." His presentation focused on two different aspects dealing with the Minimum School Program (MSP) budget: 1) FY 2015 Budget Estimates Compared to Actual Experience, and 2) Impacts on the FY 2016 Voted and Board Local Levy Guarantee and S.B. 97.

FY 2015 Budget Estimates Compared to Actual Experience

Mr. Leishman explained how the year end balances in the Minimum School Program (MSP) were reduced as a result of a change in the methodology used to estimate property taxes. Based on actual collections for FY 2015, the property tax collection estimate came in within the new variance range (1 percent to 4 percent) at 2 percent. As a result, the amount remaining in the MSP was $5.6 million, significantly lower than in previous years.

Mr. Leishman also discussed student enrollment estimates. Historically, student enrollment estimates have been very accurate. In FY 2015, the difference between the initial enrollment estimates and actual enrollment was 0.1 percent or 660 students. Because the Legislature appropriated funds based on the higher enrollment estimate, $2.2 million was appropriated more than what was required.

When the property taxes and enrollment balances are combined, approximately $7.8 million may be added to the MSP year-end balance. as a result of the property tax and enrollment estimates. Preliminary figures show that FY 2015 may close with approximately $40.0 million in remaining balances.

Mr. Leishman pointed out that the Utah State Office of Education is still in the process of finalizing the FY 2015 budget. When accounting for final changes, multi-year programs, and encumbrances, there may be approximately $25.0 million in balances remaining in the MSP.

Mr. Leishman posed two questions to the Committee: 1) How much of a budgetary cushion is appropriate for the MSP? 2) What happens when estimates are off and balances are insufficient to cover the difference? He pointed out that $25.0 million is less than 1 percent of the total $3.5 billion MSP budget and that it might be prudent to keep some funding in reserve. If future estimates are significantly off and balances are insufficient to cover the difference, the Legislature could appropriate more funding either in a special session or the following general session. Another option is that statute requires that the State Board of Education reduce the Weighted Pupil Unit (WPU) Value (reduce funding for all students) to meet the level of revenue appropriated by the Legislature.

Voted & Board Local Levy Guarantee

Mr. Leishman explained the issues associated with the Voted & Board State Guarantee rate and S.B. 97, “Property Tax Equalization Amendments,” passed during the 2015 General Session. He noted that there were two different appropriations to the State Guarantee rate - $56.3 million for Increased Property Tax Equalization (S.B. 97) and $23.0 million for Student Growth and Rate Change Adjustments. As the session progressed, three bills appropriated the funding or changed the guarantee rate. The Guarantee Rate set in S.B. 97 superseded the initial rate set in S.B. 1. However, the S.B. 97 rate did not account for the $23 million for Student Growth. Consequently, even though the money has been appropriated to the State Board of Education, the Board cannot distribute the money until the Guarantee Rate is changed in statute.

Mr. Ball confirmed that the funding is there but the State Board of Education does not have the authority to allocate it to school districts.

Co-Chair Hillyard ask what would happen with the school districts if the legislation was left as is. He also wanted to know what the options were for making a change in statute.

Mr. Leishman explained that within the statutory language for the Voted & Board there is a mechanism that allows the State Board of Education to distribute any unspent balance from the prior year in the current fiscal year. As such, at the end of FY 2016, the funding for student growth would become a part of a nonlapsing balance in the Voted & Board program. In FY 2017, the State Board would then be able to distribute the money to targeted school districts. The Legislature also has the option of making a rate change in a special session or during the base budget process in next year’s general session.

6. Determination of Statewide Average Motor Fuel Rack Price

Chairman John Valentine, Utah State Tax Commission, highlighted the provisions set forth in H.B. 362, “Transportation Infrastructure Funding,” relating to the determination of the state wide average motor fuel rack price. He referred to a chart, “OPIS Standard Rack Price Daily for 07/01/2015 – 06/30/2015,” which shows the pricing of gas based upon the major service, and discussed the methods applied to establishing the tax rate for motor and special fuel. Chairman Valentine reviewed a draft of an administrative rule defining how the statewide average rack price of a gallon of motor fuel shall be determined.

Commissioner Rebecca Rockwell, Utah State Tax Commission, commented on the Commission’s role in administering and supervising the tax laws of the State. She spoke about transparency and making sure the Commission’s interpretation of statute is consistent with the intent of the Legislature.

Commissioner Rockwell reviewed the handout, “Rulemaking Timeline for 2015 H.B. 362, Transportation Infrastructure Funding,” pointing out the short time frame they were working under so that an approved administrative tax rate could take effect on January 1, 2016. She indicated that the Tax Commission was scheduled to meet on October 22, 2015 at which time the rule could be approved. H.B. 362 requires 60 days’ public notice of the fuel tax rate that will take effect on January 1, 2016.

Commissioner Valentine asked for the Committee’s vote of support indicating that the proposed rule had met the intent of the Legislature.

MOTION: Rep. Sanpei moved to recommend the Tax Commission proceed with determination of the statewide average motor fuel rack price as outline in Commissioner Valentine’s presentation today.

Rep. Arent commended the Commission for its work in accomplishing what the Legislature had intended.

A vote was taken on the motion. The motion passed unanimously with Sen. Davis, Sen. Adams, and Rep. Dee absent for the vote.

7. Corporate Franchise and Income Tax Amendments (SB 1001)

Dr. Thomas Young, Senior Economist, LFA, discussed the financial impact of S.B. 1001, which extends the statute of limitations for tax refund claims. He reported that since the 2015 General Session, new refund claims have been filed totaling $6 million, which is higher than the original fiscal note of $5 million. Dr. Young explained that the $6 million is the known high end of the fiscal impact because it is based upon a limited survey, and 2) some portion of the $6 million may need to be adjudicated. He also pointed out that only a percentage of those cases are coming out in favor of the taxpayer.

Dr. Young reported that as of now the Education Fund is running about $125 million above target. It is on the higher end of the $60 million to $200 million range reported in June 2015. So, the refunds could be as much as $6 million out of $125 million.

Senator Howard Stephenson, distributed and discussed a summary sheet, “S.B. 1001 – Corporate Franchise and Income Tax Amendments.” S.B. 1001 corrects an inequity in the state’s corporate income tax code.

The summary, prepared by the Utah Taxpayers Association, states that "due to the ambiguity in the statutory language, the Tax Commission recently changed an 82-year practice and started denying refunds under the statute of limitations during periods where deficiencies are allowed. This change in the Tax Commission practice was not known to the Legislature until the summer of 2014." S.B. 1001 clarifies the code to return to the 82-year practice from 1929 -2011 where the Utah statute of limitations is the same for deficiencies and refunds.

Sen. Stephenson was not certain what percentage of the potential $6 million in refunds the Tax Commission was going to refund. He said that the Tax Commission will determine the merits of each case.

Sen. Dabakis questioned whether or not S.B. 1001's provisions should be retroactive. He also raised the question that perhaps one taxpayer might be looking to receive one large refund. Sen. Stephenson clarified that S.B. 1001 would be retroactive to January 1, 2015. He was not aware of any particular taxpayer who would stand to benefit by this legislation. Sen. Dabakis noted that after the bill was passed, the Tax Commission received a lot of interest in refunds. He suggested that it might be better to make the legislation proactive rather than retroactive.

Chairman Valentine clarified that S.B. 1001 was vetoed by the Governor. Subsequent to the legislative session, the Tax Commission received additional filings of about $500,000. He said that the number of filings was limited and that the total amount of refund in question is $6 million. Chairman Valentine reiterated that the Commission still has to go through the adjudicative process to determine if these filings have merit.

Sen. Dabakis felt that the state would be better served by putting on a future date, rather than a past date. He submitted that there may be one or two taxpayers who may stand to benefit substantially.

Chairman Valentine spoke in greater detail about the statute of limitations extension at the federal level. He also addressed the misconception that the Tax Commission made some changes in its interpretation of the statute of limitations in 2011. He cited a number of cases that reveal some inconsistencies in the treatment of filings at the Commission's audit staff level as opposed to the appeals section which has remained consistent in its rulings.

Rep. King asked for further clarification on how cases are adjudicated. He also asked if S.B. 1001 simplifies the work of the Tax Commission. Chairman Valentine responded that during the legislative session, the Commission spoke in favor of the bill and that the statute of limitations should be the same for deficiencies and refunds. He said that it is good policy.

MOTION: Rep. Sanpei moved to give a favorable recommendation to S.B. 1001 and adopt it as a committee bill. The motion passed. Sen. Dabakis, Sen. Davis, and Sen. Escamilla voted against the motion. Sen. Mayne, Rep. Dee, and Rep. Wilson were absent for the vote.

8. Correctional Facility Operational Cost Comparison

Mr. Ball explained that the Prison Relocation Commission (PRC) had spent a lot of time deliberating which site to recommend for a new prison. He indicated that there were a lot of factors that went into that decision. Included in those factors was the Commission's request of LFA to report on the long-term operating costs of the various sites in question. Mr. Ball presented LFA's findings outlined in the presentation, "Prison Relocation – Transportation, Utilities and other Ongoing Cost Components."

Mr. Ball discussed the cost comparison as follows: cost to transport inmates from the state prison to various sites; inmate transportation and vendor delivery costs; water and sewer costs; utilities and road maintenance; commuting costs for employees and volunteers; and employee and volunteer population density.

Dr. Young explained how he calculated the long-term costs and Mr. Ball reported on the results for each of the five prison site locations: Cedar Valley South, I-80/7200 West, Lake Mountain West, SR 138 Industrial Park, and Draper.

Mr. Ball referred to the chart, "Summary of Select Long-Term Operating Costs," to show the total long-term operating costs for Net Present Value (NPV), Transportation, Vendor, Water, Sewer, Power, Gas, Communication, and Road Costs. The chart indicates that the long-term costs for a prison would be less at the I-80/7200 West site.

Mr. Ball responded to questions regarding the 50 year NPV design life of buildings, adequate planning for religious organization volunteers to service the prison, and if prison construction would affect Utah's bond rating.

Sen. Hillyard reminded the committee that the next EAC meeting would be October 20, 2015.

9. Other Business/Adjourn

MOTION: Rep. Wilson moved to adjourn. The motion passed unanimously with Sen. Mayne, President Niederhauser, and Rep. Dee absent for the vote.

Co-Chair Hillyard adjourned the meeting at 4:18 p.m.