

JOINT RULES RESOLUTION ON FISCAL NOTE PROCESS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: _____

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



28 of the new program or agency in reference to the performance note after the new program or
29 agency is established;

30 ▶ provides procedures for requiring the Executive Appropriations Committee to
31 review those programs that fail to meet performance measures; and

32 ▶ provides that the Executive Appropriations Committee may recommend that a
33 program that fails to meet performance measures be repealed, defunded, have its
34 appropriations reduced, or some other action.

35 **Special Clauses:**

36 None

37 **Legislative Rules Affected:**

37a **§→ AMENDS:**

37b **JR4-2-403 ←§**

38 ENACTS:

39 **JR4-2-404**

40 **JR4-2-405**



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

42a **§→ Section 1. JR4-2-403 is amended to read:**

42b **JR4-2-403. Fiscal Notes.**

42c **(1) (a) (i) When the Legislative Fiscal Analyst receives the electronic copy of the**
42d **approved legislation from the Office of Legislative Research and General Counsel, that office**
42e **shall, within three {~~legislative~~ } business days:**

42f **(A) review and analyze the legislation to determine its fiscal impact; and**

42g **(B) provide a fiscal note to the sponsor of the legislation.**

42h **(ii) The three day deadline for the preparation of the fiscal note may be extended if the**
42i **Legislative Fiscal Analyst requests it, states the reasons for the delay, and informs the sponsor**
42j **of the legislation of the delay.**

42k **(b) If the Legislative Fiscal Analyst determines that the legislation has no fiscal impact,**
42l **the Legislative Fiscal Analyst may release the fiscal note immediately after the sponsor has**
42m **received a copy of the fiscal note.**

42n **(c) The sponsor may:**

42o **(i) approve the release of the fiscal note;**

42p **(ii) direct that the fiscal note be held; or**

42q **(iii) if the sponsor disagrees with the fiscal note, contact the Legislative Fiscal ←§**

42r **§→Analyst to discuss that disagreement and provide evidence, data, or other information to**
 42s **support a revised fiscal note.**

42t (d) **If the sponsor does not contact the Legislative Fiscal Analyst with instructions**
 42u **about the fiscal note within one 24 hour legislative day, the Legislative Fiscal Analyst shall**
 42v **release the fiscal note.**

42w (e) **The Legislative Fiscal Analyst shall make the final determination on the fiscal note.**

42x (f) **The fiscal note shall be printed with the legislation.**

42y (2) **If an amendment or a substitute to legislation appears to substantively change the**
 42z **fiscal impact of the legislation, the Legislative Fiscal Analyst shall prepare an amended fiscal**
 42aa **note for the legislation.**

42ab (3) **The fiscal note is not an official part of the legislation. ←§**

43 Section **§→ [†] 2 ←§ . JR4-2-404** is enacted to read:

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

45 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

80 (iii) prepare a statement to be attached to the legislation containing the information
81 required by Subsection (2)(c).

82 (c) The statement shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

119 (c) a statement of performance measures that:

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

- 121 (ii) lists the services that will be provided by the new program or agency;
122 (iii) lists the goals or impact that the new program or agency intends to achieve within
123 one, two, and three years;
124 (iv) lists the resources and steps required to achieve the goals;
125 (v) lists the benchmarks that the new program or agency will monitor to measure
126 progress toward the goals and outcome;
127 (vi) lists the performance measures that will be used to evaluate progress toward the
128 goals and outcome; and
129 (vii) states how information on progress and performance measures will be gathered in
130 a reliable, objective fashion.
131 (5) After legislation that creates a new program or a new agency has gone into effect,
132 the Legislative Auditor General shall, subject to the procedures and requirements of Section
133 36-12-15:
134 (a) provide an outline of best practices to the governmental entity that administers the
135 new program or to the new agency;
136 (b) include in the outline information to assist that governmental entity or new agency
137 with the creation of:
138 (i) policies that promote best practices;
139 (ii) performance measures; and
140 (iii) data collection procedures; and
141 (c) for a new program or a new agency that was created by legislation where the
142 governmental entity failed to provide a performance note:
143 (i) provide a notice to the governmental entity that administers the new program or to
144 the new agency that the governmental entity or agency is required to submit a performance note
145 to the Legislative Auditor General within 30 calendar days of the date of the notice;
146 (ii) retain the performance note that is received from the governmental entity or new
147 agency and forward a copy of the note to:
148 (A) the primary sponsor of the legislation;
149 (B) the opposite house sponsor of the legislation;
150 (C) the President of the Senate and Speaker of the House; and
151 (D) the Senate minority leader and House minority leader; and

152 (iii) if the governmental entity or new agency fails to provide a performance review
153 note within the required deadline, provide notice to those listed in Subsection (5)(c)(ii) that a
154 performance note was requested from, but was not received from, the governmental entity that
155 administers the new program or the new agency.

156 (6) The Legislative Auditor General may use the performance note in its review of new
157 programs and agencies under Section ~~§~~→ [35-12-15] 36-12-15 ←~~§~~ .

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

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

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

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

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

169 (c) as prioritized by the Legislative Audit Subcommittee, make a determination as to
170 whether the goals or proposed impacts and whether each performance measure have been met
171 or not met.

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

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

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

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

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

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

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

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

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

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

191 (c) take no action; or

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

Legislative Review Note
as of 12-21-10 12:56 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.J.R. 5, 2011 General Session

SHORT TITLE: Joint Rules Resolution on Fiscal Note Process

SPONSOR: Niederhauser, W.

STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this resolution likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this resolution likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this resolution likely will not result in direct, measurable expenditures by Utah residents or businesses.