

Senator Wayne L. Niederhauser proposes the following substitute bill:

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



26 requesting performance notes from certain government entities that failed to submit notes
27 during the legislative process and to provide information to government agencies;
28 ▶ requires the Office of the Legislative Auditor General to evaluate the performance
29 of the new program or agency in reference to the performance note after the new
30 program or agency is established;
31 ▶ provides procedures for the Legislative Audit Subcommittee to request an
32 additional in-depth review of a new agency or program;
33 ▶ provides procedures for requiring the Executive Appropriations Committee to
34 review those programs that fail to meet performance measures; and
35 ▶ provides that the Executive Appropriations Committee may recommend that a
36 program that fails to meet performance measures be repealed, defunded, have its
37 appropriations reduced, or some other action.

38 **Special Clauses:**

39 None

40 **Legislative Rules Affected:**

41 AMENDS:

42 **JR4-2-403**

43 ENACTS:

44 **JR4-2-404**

45 **JR4-2-405**



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

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

49 **JR4-2-403. Fiscal Notes.**

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

53 (A) review and analyze the legislation to determine its fiscal impact; and

54 (B) provide a fiscal note to the sponsor of the legislation.

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

57 of the legislation of the delay.

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

61 (c) The sponsor may:

62 (i) approve the release of the fiscal note;

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

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

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

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

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

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

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

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

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

78 (1) As used in this section:

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

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

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

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

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

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

88 moved to another organizational position within that branch of government unless the
89 government entity meets the criteria in Subsection (1)(a)(i)(C) or (D).

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

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

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

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

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

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

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

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

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

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

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

115 (c) The statement shall:

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

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

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

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

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

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

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

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

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

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

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

141 (f) If the governmental entity does not provide a performance note by the submission
142 deadline, the Legislative Fiscal Analyst shall attach a performance note to the legislation that
143 indicates only that the governmental entity did not submit performance measures by the
144 submission deadline.

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

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

- 150 (a) the name of the governmental entity submitting the performance note, as applicable;
151 (b) the names and titles of the individuals who prepared the performance note; and
152 (c) a statement of performance measures that:
153 (i) explains the purpose and duties of the new program or agency;
154 (ii) lists the services that will be provided by the new program or agency;
155 (iii) lists the goals and proposed impacts that the new program or agency intends to
156 achieve within one, two, and three years;
157 (iv) lists the resources and steps required to achieve the goals and proposed impacts;
158 (v) lists the benchmarks that the new program or agency will monitor to measure
159 progress toward the goals and outcome;
160 (vi) lists the performance measures that will be used to evaluate progress toward the
161 goals and proposed impacts; and
162 (vii) states how information on progress and performance measures will be gathered in
163 a reliable, objective fashion.
164 (5) After legislation that creates a new program or a new agency has gone into effect,
165 the Legislative Auditor General shall, subject to the procedures and requirements of Section
166 36-12-15:
167 (a) provide an outline of best practices to the governmental entity that administers the
168 new program or to the new agency;
169 (b) include in the outline information to assist that governmental entity or new agency
170 with the creation of:
171 (i) policies that promote best practices;
172 (ii) performance measures; and
173 (iii) data collection procedures; and
174 (c) for a new program or a new agency that was created by legislation where the
175 governmental entity failed to provide a performance note:
176 (i) provide a notice to the governmental entity that administers the new program or to
177 the new agency that the governmental entity or agency is required to submit a performance note
178 to the Legislative Auditor General within 30 calendar days of the date of the notice;
179 (ii) retain the performance note that is received from the governmental entity or new
180 agency and forward a copy of the note to:

181 (A) the primary sponsor of the legislation;
182 (B) the opposite house sponsor of the legislation;
183 (C) the President of the Senate and Speaker of the House; and
184 (D) the Senate minority leader and House minority leader; and
185 (iii) if the governmental entity or new agency fails to provide a performance review
186 note within the required deadline, provide notice to those listed in Subsection (5)(c)(ii) that a
187 performance note was requested from, but was not received from, the governmental entity that
188 administers the new program or the new agency.

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

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

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

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

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

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

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

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

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

212 determination made.

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

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

219 (ii) the sponsor and opposite house sponsor of the legislation that was subject to the
220 performance note requirements under Joint Rule 4-2-404 ~~H~~→ , or the President of the Senate or
220a Speaker of the House, as appropriate, if the sponsor or opposite house sponsor is no longer
220b serving as a legislator ~~←H~~ ; and

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

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

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

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

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

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

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

233 (c) take no action; or

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

FISCAL NOTE

S.J.R. 5 1st Sub. (Green)

SHORT TITLE: **Joint Rules Resolution on Fiscal Note Process**

SPONSOR: **Niederhauser, W.**

2011 GENERAL SESSION, 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.