

1 **JOINT RULES RESOLUTION ON FISCAL NOTE PROCESS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne L. Niederhauser**

5 House Sponsor: John Dougall

7 **LONG TITLE**

8 **General Description:**

9 This resolution enacts a legislative rule to provide a process for attaching a performance
10 note on legislation that creates a new program or agency and to provide a review
11 process based on the performance note.

12 **Highlighted Provisions:**

13 This resolution:

- 14 ▶ provides definitions;
- 15 ▶ provides for the placement of a performance note on legislation that creates a new
16 program or agency;
- 17 ▶ provides that deadlines for fiscal notes and performance notes be calculated by
18 business days rather than legislative days;
- 19 ▶ outlines duties of the Office of the Legislative Fiscal Analyst relating to determining
20 whether or not a performance note is required;
- 21 ▶ outlines duties of government entities to prepare a performance note;
- 22 ▶ lists information that must be contained in the performance note;
- 23 ▶ outlines the duties of the Legislative Fiscal Analyst and the legislative sponsor in
24 relation to the content of a performance note;
- 25 ▶ outlines duties of the Office of the Legislative Auditor General relating to
26 requesting performance notes from certain government entities that failed to submit
27 notes during the legislative process and to provide information to government
28 agencies;
- 29 ▶ requires the Office of the Legislative Auditor General to evaluate the performance

30 of the new program or agency in reference to the performance note after the new program or
31 agency is established;

32 ▶ provides procedures for the Legislative Audit Subcommittee to request an
33 additional in-depth review of a new agency or program;

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

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37 program that fails to meet performance measures be repealed, defunded, have its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

39 **Special Clauses:**

40 None

41 **Legislative Rules Affected:**

42 AMENDS:

43 **JR4-2-403**

44 ENACTS:

45 **JR4-2-404**

46 **JR4-2-405**



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

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

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

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

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

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

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

58 of the legislation of the delay.

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

62 (c) The sponsor may:

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

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

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

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

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

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

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

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

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

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

79 (1) As used in this section:

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

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

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

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

85 (D) a governmental entity that is modified by legislation to substantially expand the

86 scope of individuals or entities that are entitled to receive the services or benefits offered by the
87 governmental entity.

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

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

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

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

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

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

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

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

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

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

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

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

116 (c) The statement shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

153 (c) a statement of performance measures that:

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

155 (ii) lists the services that will be provided by the new program or agency;

156 (iii) lists the goals and proposed impacts that the new program or agency intends to
157 achieve within one, two, and three years;

158 (iv) lists the resources and steps required to achieve the goals and proposed impacts;

159 (v) lists the benchmarks that the new program or agency will monitor to measure
160 progress toward the goals and outcome;

161 (vi) lists the performance measures that will be used to evaluate progress toward the
162 goals and proposed impacts; and

163 (vii) states how information on progress and performance measures will be gathered in
164 a reliable, objective fashion.

165 (5) After legislation that creates a new program or a new agency has gone into effect,
166 the Legislative Auditor General shall, subject to the procedures and requirements of Section
167 36-12-15:

168 (a) provide an outline of best practices to the governmental entity that administers the
169 new program or to the new agency;

170 (b) include in the outline information to assist that governmental entity or new agency
171 with the creation of:

172 (i) policies that promote best practices;

173 (ii) performance measures; and

174 (iii) data collection procedures; and

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

177 (i) provide a notice to the governmental entity that administers the new program or to
178 the new agency that the governmental entity or agency is required to submit a performance note
179 to the Legislative Auditor General within 30 calendar days of the date of the notice;

180 (ii) retain the performance note that is received from the governmental entity or new
181 agency and forward a copy of the note to:

182 (A) the primary sponsor of the legislation;

183 (B) the opposite house sponsor of the legislation;

184 (C) the President of the Senate and Speaker of the House; and

185 (D) the Senate minority leader and House minority leader; and

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

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

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

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

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

197 (a) review each new agency or new program that has been determined to be a new

198 agency or new program that is subject to the requirements of JR4-2-404;

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

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

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

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

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

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

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

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

225 (3) Upon receipt of a report or notice issued under Subsection (2), the chairs of the

226 Executive Appropriations Committee shall place the report or notice on the agenda for review
227 and consideration at the next Executive Appropriations Committee meeting.

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

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

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

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

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

236 (c) take no action; or

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