

## SJR005S01 compared with SJR005

~~deleted text~~ shows text that was in SJR005 but was deleted in SJR005S01.

inserted text shows text that was not in SJR005 but was inserted into SJR005S01.

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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: \_\_\_\_\_

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#### 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

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that the Executive Appropriations Committee may recommend that a program that fails to meet performance measures be repealed, defunded, have its appropriations reduced, or some other action.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

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

Section 1. ~~JR4-2-404~~; JR4-2-403 is ~~enacted~~; amended to read:

JR4-2-403. Fiscal Notes.

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(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:

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

(1) As used in this section:

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

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

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(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 government 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 government 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 ~~{agency}~~program or a new ~~{program}~~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 Joint Rule 4-2-404(4) to the

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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

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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 ~~for impact~~ **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 ~~outcome~~ **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

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(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 ~~35-12-15~~36-12-15.

Section ~~2~~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 Joint Rule 4-2-404;

(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; ~~and~~

~~— (c) as:~~

(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

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substantially met its goals and proposed impacts, and has provided adequate performance measures; and:

(d) if authorized and prioritized by the Legislative Audit Subcommittee, ~~make a determination as to whether the goals or proposed impacts and whether each performance measure have been met or not met.~~

~~(2) (a) If~~ 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 ~~the goals or impact or the~~ a new agency or new program has not substantially met its goals, proposed impacts, or has not provided adequate performance measures ~~have not been substantially met or if a governmental entity refuses to supply a performance note~~, the Legislative Auditor General shall provide notice of the refusal or determination ~~or refusal~~ 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 Joint Rule 4-2-404; and
- (iii) the chairs of the Executive Appropriations Committee.

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

~~(3)4~~ ~~Upon consideration of the matter~~ 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 ~~the~~ 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;



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

(c) take no action; or

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

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**Legislative Review Note**

~~as of 12-21-10 12:56 PM~~

~~Office of Legislative Research and General Counsel}~~