LEGISLATIVE OVERSIGHT
OF FEDERAL FUNDS
Presentation for NCSL, August 8, 2012

REASONS FOR REVIEW

• Concern over increases in federal deficit
• Concern over increases in state obligations
• Legislative control of state budget
• Legislative control over policy issues
MEANS OF CONTROL

• CONDITIONAL APPROPRIATIONS
  Regulating use of state-appropriated funds

• MONITORING AND APPROVAL
  Knowing commitments in advance

UTAH’S PROCESS

1. Review grant applications
2. Attach intent language to appropriations
3. Prepare contingency plans
GRANTS REVIEW
FEDERAL FUNDS

Utah Code §63J-5-201

- Primary Review Process During Annual Appropriations
  - Agencies submit grants to Governor's budget office
  - Governor submits "federal funds request summary" to appropriations subcommittees
  - Subcommittees approve and/or deny based on grant detail
  - Executive committee may change subcommittee's recommendation
  - Whole Legislature appropriates

GRANTS REVIEW
FEDERAL FUNDS

INTERIM PROCESS FOR NEW OR CHANGED GRANTS

- LOW IMPACT GRANT
  - Up to $1 mil from Feds
  - No permanent employees
  - No state match

- MEDIUM IMPACT GRANT
  - >$1 mil & <$10 mil from Feds
  - < 11 permanent employees
  - Up to $1 mil state match
GRANTS REVIEW
FEDERAL FUNDS
INTERIM PROCESS FOR NEW OR CHANGED GRANTS

HIGH IMPACT GRANT
• $10 mil plus from Feds
• > 10 permanent employees
• > $1 mil state match

Rules apply to unanticipated grants as well as previously approved grants that grow by more than 25%

LEGISLATIVE CONTROL

• Congressional conundrum
• Contractual conundrum
APPROPRIATIONS CONTROL

Intent Language

“It is the intent of the Legislature that...

- Penalties for violating intent language
- Threat of reduced appropriations / retaliation by Legislature
- Direct enforceability is likely limited
  - Intent language < Statute

Intent language rules:

- Language must be directly connected to the appropriation
- Appropriate uses for intent language:
  - Specify the use of the appropriation for a specific program or purpose
It is the intent of the Legislature that the Reid Act funds appropriated for FY 2013 to the Department of Workforce Services be used for workforce development and labor exchange activities.

**Intent language rules:**

- Language must be directly connected to the appropriation

- Appropriate uses for intent language:
  - Specify the use of the appropriation for a specific program or purpose
  - Designate appropriated funds as non-lapping
ITEM 33  To Department of Transportation - Safe Sidewalk Construction

The Legislature intends that the funds appropriated from the Transportation Fund for pedestrian safety projects be used specifically to correct pedestrian hazards on State highways.

The Legislature also intends that local authorities be encouraged to participate in the construction of pedestrian safety devices. The appropriated funds are to be used according to the criteria set forth in Sections 22-8-104, Utah Code Annotated, 1953. The funds appropriated for sidewalk construction shall not lapse. If local governments cannot use their allocations of Sidewalk Safety Funds in two years, these funds will be available for other governmental entities which are prepared to use the resources. It is the intent of the Legislature that local participation in the Sidewalk Construction Program is on a 75% state and 25% local match basis.

Intent language rules:

► Language must be directly connected to the appropriation

► Appropriate uses for intent language:

► Specify the use of the appropriation for a specific program or purpose (within the scope of the appropriation)

► Designate specific appropriated funds as non-lapsing

► Authorize or direct the expenditure of contingent revenues or internal service funds
ITEM 95  To Department of Human Services - Division of Child and Family Services
From General Fund, One-time  (2,260,400)
From Federal Funds  1,652,000
Schedule of Programs:
Out-of-Home Care  (2,136,800)
Minor Grants  365,000
Adoption Assistance  1,163,400

Under Section 63-1-603 of the Utah Code the Legislature intends that any remaining funds provided by item 16, Chapter 4 of the Laws of Utah 2011 for the Division of Child and Family Services not lapse at the close of Fiscal Year 2012. It is further the intent of the Legislature that nonlapsing funds are to be used only for one-time costs associated with Adoption Assistance, Out of Home Care, Service Delivery, In-home Services, and SAFE Management Information System modernization. If nonlapsing funds are to be used for ongoing programs, the division must first receive specific approval from the Social Services Appropriations Subcommittee in FY 2013 at either an interim meeting or during the 2013 General Session.

Intent language rules:

▸ Language must be directly connected to the appropriation

▸ Appropriate uses for intent language:
  ◀ Specify the use of the appropriation for a specific program or purpose (within the scope of the appropriation)
  ◀ Designate specific appropriated funds as non-lapsing
  ◀ Authorize or direct the expenditure of contingent revenues or internal service funds
  ◀ Direct a government entity to perform a non-binding study and report to the Legislature
APPROPRIATIONS CONTROL

- Dangers of intent language
- Limited enforceability
- Easy target for "under the radar" legislation
**Intent language rules:**

- Prohibited intent language:
  - Enacts, amends, or repeals substantive law
  - Contradicts existing law
  - Creates a new program
  - Issues or requires the issuance of a contract or request for proposal
  - Awards a contract not specifically authorized by statute
  - Violates separation of powers provisions (e.g. Micromanages executive branch)

---

**A PAGE FROM THEIR PLAY BOOK...**

All General Funds appropriated to the Executive Director Operations line item are contingent upon expenditures from Federal Funds - American Recovery and Reinvestment Act (H.R. 1, 111th United States Congress) not exceeding amounts appropriated from Federal Funds - American Recovery and Reinvestment Act in all appropriation bills passed for FY 2010. If expenditures in the Executive Director Operations line item from Federal Funds - American Recovery and Reinvestment Act exceed amounts appropriated to the Executive Director Operations line item from Federal Funds - American Recovery and Reinvestment Act in FY 2010, the Division of Finance shall reduce the General Fund allocations to the Executive Director Operations line item by one dollar for every one dollar in Federal Funds - American Recovery and Reinvestment Act expenditures that exceed Federal Funds - American Recovery and Reinvestment Act appropriations.
WHY INTENT LANGUAGE WORKS IN UTAH

- We're nice
- Appropriations authority: Money = Power
- Legislature and legislative leadership enforce it
- Clear, mandatory process
- Centralized financial entity

BUDGET CONTINGENCIES
BUDGET CONTINGENCIES

- Potential shortfall in revenues due to federal government cuts
- Contingency plan for state financing in the case of losses in federal funds

NATIONAL OVERVIEW BUDGET CONTINGENCIES

State Contingency Plans
Direct, informal poll of state legislatures

- Making contingencies
- No contingencies yet

Source: National Office of Legislative Research and General Counsel
BUDGET CONTINGENCIES

2011 HB 138

- Report to Legislature’s Executive Appropriations Committee
- Committee may:
  - Call agencies to explain plans
  - Recommend changes in legislative appropriations to the agency

CONTINGENCY THROUGH RISK MANAGEMENT

- SEPARATE FEDERAL FUNDS BUDGET RESERVE
  - Could be sized to cover risk of declining fed support
  - 2012 HB 136

Highlighted Provisions:
This bill:
  - creates a restricted account for the purpose of funding programs or services currently provided through federal funding in the event that the federal funding is reduced.
CONTINGENCY THROUGH RISK MANAGEMENT

- Increase existing reserve thresholds
  - Size of rainy day funds can cover revenue volatility
  - Could factor grant risk into revenue error rates
- 2012 SB 280

  This bill:
  - modifies the limits on the General Fund Budget Reserve Account;
  - modifies the limits on the Education Budget Reserve Account;

QUESTIONS?

- Jonathan Ball, Legislative Fiscal Analyst
- Eric Weeks, Deputy General Counsel
Utah State Legislature